80-1442

Office-Supreme Court, U.S.
FILED
FEB 17 1981
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term, 1980

CLYDE ROMILLY, *et al.*,

Petitioners,

vs.

AMOCO TRINIDAD OIL COMPANY and SANTA FE DRILLING COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AVRAM G. ADLER
ADLER, BARISH,
LEVIN AND CRESKOFF
Attorneys for Petitioners
Rohm and Haas Building
Sixth and Market Streets
Philadelphia, Pennsylvania 19106
(215) 923-8900

FOGLE, JULBER,
ROTHSCHILD & FELDMAN
Co-Counsel
5900 Wilshire Boulevard, Suite 2600
Los Angeles, California 90036
(213) 937-6250

AVRAM G. ADLER
STANLEY P. KOPS
ANNE E. FIALKOWSKI
On the Brief

4641 LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing
South River, N.J. (201) 257-6850 New York, N.Y. (212) 840-9494 Philadelphia, Pa. (215) 563-5587 Washington, D.C. (202) 783-7288

QUESTIONS PRESENTED

1. Whether the criteria of *Lauritzen v. Larsen*, 345 U.S. 571 (1953) may be applied to seamen injured aboard an American flag vessel duly enrolled and certificated by the United States Coast Guard?

2. When the courts below bifurcated the seamen serving aboard an American flag vessel owned by an American defendant so that only the American seamen are permitted the application of the Jones Act, 46 U.S.C. §688, *et seq.* and related maritime rights, should not certiorari be granted so that the Jones Act which was promulgated by Congress as a remedial statute for all seamen so situated be applied evenhandedly?

3. May the Court of Appeals for the Ninth Circuit carve out an exception to time-honored prinicples of law that an American flag vessel documented by the U.S. Coast Guard with flotation, mobility and upon the navigable waters accords Jones Act jurisdiction to those who eat and sleep aboard while accomplishing the purpose of that vessel, merely because that vessel's purpose is drilling for oil, and when proposed bills for such an exception have been rejected by the Congress of the United States?

PARTIES

Petitioners in the action are Bethilda Betty Phillips, Widow and Personal Representative of Walter Phillips, Deceased, Clyde Romilly, Claudius Stanislaus, Carlton Stout, Cyril Larode, Perry Fraser, Swaby Doyle, Sonny Bailey, James Williams, Franklyn Hayes, Eliase Garcia and Isaac Stewart. Respondents are Amoco Trinidad Oil Company and Santa Fe Drilling Company.

TABLE OF CONTENTS

Page

Questions Presented i

Parties i

Table of Contents ii

Table of Citations iii

Opinions Below 2

Jurisdiction 2

Statutory Provisions Involved 2

Statement of the Case 2

Reasons For Granting the Writ:

I. The criteria of *Lauritzen v. Larsen* are inapplicable to an American flag vessel duly enrolled and certificated by the United States Coast Guard. ... 8

II. The action by the court below violates the constitutional requirement of uniformity and constitutes an invalid amendment of the Jones Act by removing special purpose vessels from the reach of that act. 12

Contents

Page

III. The court below has removed the foreign nationals serving on an American flag vessel from Jones Act jurisdiction in violation of the treaties of the United States and the case law of this Court and sister circuits on the dubious ground of weighing national interests. 14

Conclusion 25

TABLE OF CITATIONS

Cases Cited:

Antypas v. Cia Maritima San Basilio, S.A., 541 F. 2d 307 (2nd Cir. 1976), cert. denied, 429 F. 2d 1098 (1977) ...21, 24

Bubetta v. Santa Fe Overseas, Inc. (N.D. Calif. 1976) 16, 17

de Alvarez v. Creole Petroleum Corporation, 613 F. 2d 1240. 22

DeMateos v. Texaco, Inc., 562 F. 2d 895, cert. denied, 435 U.S. 904 (1978) 22

Diaz v. Santa Fe Overseas Inc. (N.D. Calif. 1977) 16, 17

Farmer v. Standard Dredging Corp., 167 F. Supp. 381 (U.S.D. Del. 1958) 17, 18, 23

Fitzgerald v. United States Lines, 374 U.S. 16, 20 L. Ed. 2d 720 15

Contents

Page

Grimes v. Raymond Concrete Pile Co., 356 U.S. 252 (1958) . 12

Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970) .. 20, 21, 24

House v. Santa Fe International Corp., 1978 A.M.C. 190 (S.D. Tex. 1978) 20

In re Ross, 140 U.S. 453 (1891) 10, 12

Lauritzen v. Larsen, 345 U.S. 571 (1953) 1, 8, 9, 10, 11, 14, 20, 24

Moncada v. Lemuria Shipping Corporation, 491 F. 2d 470 (2d Cir. 1974), cert. denied, 417 U.S. 947 .....21, 24

Offshore v. Robinson, 266 F. 2d 769 (C.A.S. 1969) 12

Panama Railroad Co. v. Johnson, 264 U.S. 375 (1924) 11, 12

Producers Drilling Co. v. Gray, 361 F. 2d 432 (5th Cir. 1966) 12

Rego v. Santa Fe International Corporation, Docket No. H-77-634 (U.S.D.C. Tex. 1977) 17

Romero v. International Terminal Operating Co., 358 U.S. 354 (1959) 20

Texas Co. v. Gianfala, 222 F. 2d 382 (5th Cir. 1955), rev'd, 350 U.S. 879 ..... 12, 14, 25

Statutes Cited:

12 U.S.C. §1292(b) 5

Contents

Page

28 U.S.C. §1254(1) 2

28 U.S.C. §1404(a) 3

The Jones Act, 46 U.S.C. §688, et seq. ..... passim

Rules Cited:

Federal Rules of Civil Procedure:

Rule 12 3

Rule 12b(2) 3

Rule 12b(3) 3

Rule 12b(4) 3

Rule 12b(5) 3

Rule 54(b) 2

Other Authorities Cited:

H.R. 6705, 96th Cong., 2d Sess. 13

Norris, The Law of Seamen, Third Edition in Volume 2, Section 684 ..... 18, 19

Volume I Winter, 1977: The Hastings International and Comparative Law Review, 91 ..... 23, 24

Contents

Page

APPENDIX

Opinion of the United States Court of Appeals for the Ninth Circuit Filed September 29, 1980 ..... 1a

Order of the United Sta es Court of Appeals for the Ninth Circuit Filed November 24, 1980 ..... 16a

Reporter's Transcript of Proceedings Dated October 31, 1977 ..... 17a

Memorandum and Order of the United States District Court for the Southern District of Texas in *Rego v. Santa Fe International Corporation, et al.* 25a

H.R. 6705, 96th Cong. 2nd Sess. 32a

No.

In The

Supreme Court of the United States

October Term, 1980

BETHILDA BETTY PHILLIPS, WIDOW AND PERSONAL REPRESENTATIVE OF WALTER PHILLIPS, DECEASED, *et al.*,

Petitioners,

vs.

AMOCO TRINIDAD OIL COMPANY and SANTA FE DRILLING COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above case on September 29, 1980 and denial for petition for rehearing en banc on November 19, 1980.

OPINIONS BELOW

Respondents' motions for the application of Trinidad law in the trial of the cause was granted on October 31, 1977 and the reasoning of the court was delivered from the bench, a transcript of which is set forth in the Appendix hereto at page 17a. The matter was certified to the Court of Appeals for the Ninth Circuit under Rule 54(b) of the Federal Rules of Civil Procedure and the Court of Appeals for the Ninth Circuit permitted the appeal. The opinion of the United States Court of Appeals for the Ninth Circuit is printed herein at page 1a and is reported at 632 F. 2d 82 (9th Cir. 1980). The order of the said Court of Appeals and the denial of the petition for rehearing en banc on November 19, 1980 are in the Appendix at page 16a.

JURISDICTION

The denial of the petition for rehearing of the order of the United States Court of Appeals of the Ninth Circuit was entered on November 19, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provision involved is the Jones Act, 46 U.S.C. §688, *et seq.*

STATEMENT OF THE CASE

Petitioners' decedents and the living petitioners, all but two employees of respondent Santa Fe Drilling Company, were entrapped in the fire and a loss of buoyancy which resulted from failure to utilize a proper well-casing program and blow-out prevention system. The date of the accident was December 5, 1973. Petitioners instituted a suit against Santa Fe Drilling

Company and Amoco Oil Company and Amoco International Oil Company on September 11, 1974 in the United States District Court for the Eastern District of Pennsylvania.

Petitioners' complaint with interrogatories attached demanded a jury trial and was brought under the Jones Act, 46 U.S.C. §688, *et seq.* and the maritime law alleging negligence of the respondents, their agents, servants, workmen and employees and the unseaworthiness of the barge Mariner I. Santa Fe Drilling Company in the United States District Court for the Eastern District of Pennsylvania filed a motion to dismiss for lack of personal jurisdiction over the party [Rule 12b(2)], improper venue [Rule 12b(3)], insufficiency of process [Rule 12b(4)] and insufficiency of service of process [Rule 12b(5)], or in the alternative to dismiss on the grounds of *forum non conveniens* or transfer under 28 U.S.C. §1404(a). Amoco Oil Company filed a motion to dismiss under Federal Rule of Civil Procedure 12 or in the alternative for summary judgment, or in the alternative to transfer under 28 U.S.C. §1404(a).

At a hearing it was stipulated and agreed by and between counsel that Amoco Oil Company and Amoco International Oil Company would be dismissed without prejudice as defendants. An amended complaint was to be filed naming as defendants Amoco Trinidad Oil Company in addition to Santa Fe Drilling Company, and counsel would be directed to accept service of process of this amended complaint for the sole and limited purpose of having said action transferred to the Federal District Court for the Central District of California under 28 U.S.C. §1404(a). Thereafter, the actions would be transferred to the United States District Court for the Central District of California and answers would be filed on the merits by Amoco Trinidad Oil Company and Santa Fe Drilling Company.

A motion for dismissal, pursuant to the doctrine of *forum non conveniens* with affidavits in support thereof was filed on May 12, 1976 by respondents Santa Fe Drilling Company and Amoco Trinidad Oil Company in the Central District of California. On July 7, 1976, the motion of respondents for dismissal of the action pursuant to the doctrine of *forum non conveniens* was denied, the court pointing out what while the United States District Court for the Central District of California was not a very convenient forum, it noted that the action was transferred here from the Eastern District of Pennsylvania pursuant to stipulations and that no other district court was offered any party as an alternative. The court found that dismissal was not an acceptable alternative.

The death cases of Bethilda Betty Phillips as widow and personal representative of Walter Phillips, deceased, and Doreen Straker as widow and personal representative of Owen Straker, deceased, were settled. The case of Bethilda Betty Phillips as widow and personal representative of Walter Phillips has been designated by the court as the case in which all pleadings would be filed and would be deemed applicable to the other cases. Even though her case has been settled, the designation of Bethilda Betty Phillips as a representative of all the other petitioners has been continued. The next captioned case being that of Clyde Romilly, it was scheduled for trial on November 1, 1977. On October 12, 1977, respondents then filed a motion for determination of applicable law and for a continuance of the trial date. The motion in summary requested an order from the court that the law of Trinidad and Tobago governs the above-captioned cases and the Jones Act not apply and further, since the Jones Act does not apply, petitioners were not entitled to a jury trial. Witnesses had been brought from Trinidad so that the case of Clyde Romilly, assigned for trial on November 1, 1977, would be able to proceed promptly.

However, at a hearing held on October 31, 1977, the court below ruled the law of Trinidad and Tobago to be the correct choice of law and to that extent granted the respondents' motion. No ruling was made by the court as to the petitioners' right to a jury trial, leaving it to counsel to file within twenty-five (25) days separate memoranda of points and authorities briefing the court with respect to effect of the court's ruling on the conduct of the trial of the action, the Trinidad law applicable thereto, proposed methods of determining such law and such other matters as counsel may deem appropriate.

Application was timely made to the Court of Appeals for the Ninth Circuit for leave to appeal an interlocutory order that was outcome-determinative. Permission for the appeal was granted both by the District Court and the Court of Appeals. Appeal under 12 U.S.C. §1292(b) was thereafter accomplished.

The Mariner I flew the flag of the United States of America. The United States Coast Guard issued the certificate to allow this vessel to operate. The United States Coast Guard investigated this accident and issued findings of fact and conclusions of law based upon the said investigation and also initiated various disciplinary proceedings against the master and owner and operator of the vessel as a result of the occurence in question.

Decedent Walter Phillips and all other personal injury claimants, other than Clyde Romilly and Perry Fraser, were employed by Santa Fe Drilling Company. Santa Fe Drilling Company is a corporation duly authorized and existing under the laws of the State of California with its principal office for transacting business in Orange, California. The building, design and outfitting of the Santa Fe Mariner I was all accomplished in

the United States of America in the Levingston Shipyard in Orange, Texas. After the construction of the Santa Fe Mariner I was completed in May 1968, the vessel was stationed in the Gulf of Mexico until September 1968, thereafter in Nicaragua until April 1969, thereafter in Argentina until January 1970 and thereafter in Trinidad until December 1973. Weekly reports were forwarded to the California office for the review and approval of the corporate officers charged with the duty of supervising marine drilling operations.

The purchase of material, equipment and supplies used on the Mariner I was coordinated by the equipment coordinator of Santa Fe Drilling Company from its Orange, California offices. The President of Santa Fe Drilling Company as of April 15, 1974, who was the former Vice-President and Western Hemisphere Regional Manager of the Santa Fe Drilling Company, is a resident of California and maintains his offices in Orange, California. The contract entered into and negotiated with Amoco Trinidad Oil Company was signed in Orange, California. The managerial responsiblity for the drilling operations conducted by Santa Fe Drilling Company was handled from the Orange, California office. The person in charge of the direct supervision of the drilling activities being conducted by Santa Fe Drilling Company off shore Trinidad is an American citizen, with his principal place of business in Houston, Texas and resides in Houston, Texas. In its motions to transfer, respondent Santa Fe argued that the records material to this litigation and the personnel most knowledgeable in connection with the activities aboard the vessel were residents of California or Houston, Texas.

The aforementioned Coast Guard investigation as required by United States law revealed the following:

At about 0400 on December 5, 1973, the drill barge, Santa Fe Mariner I was drilling for oil off the southeast coast of

Trinidad at a position 09°, 57', 49", north latitude, 60°, 52', 56" west longitude far beyond the traditional marine league. The Santa Fe Mariner I is a submersible drilling rig. Her primary lifesaving equipment consists of four twenty-men inflatable life rafts and one four-man rescue boat.

The Coast Guard Certificate of Inspection for the Santa Fe Mariner I, hereinafter called the vessel, requires at least two able-bodied seamen and one ordinary seaman of which one was to be designated as Master. She was also required to carry four certificated lifeboatmen; 44 industrial personnel may be carried while the total number of persons allowed is 52. At the aforementioned time there was a total of 71 persons aboard. The designated Master was not on board. There were no able-bodied seamen aboard and none of the personnel aboard were certificated lifeboatmen.

The assigned barge engineer, C.M. Boyette who was in charge of the general safety of the barge had been inadequately trained. He displayed ignorance of the emergency procedures.

The vessel was moored approximately 10.5 miles on a heading of 171° true compass from the Galeote Point, Trinidad and Tobago. The vessel was engaged in drilling a wildcat oil well.

The return drill mud and cuttings were being spilled onto the ocean floor. By so doing there was no means of analyzing the cuttings to determine the presence or extent of gas in the hole. Drilling continued until a depth of 1260 feet reached by 0230 on December 5, 1973.

At about 0400 the drill was pulled out of the hole. As soon as the drill was out, the boat gave a heave and personnel on the rig were aware of a blow-out.

There had been prior blow-outs with the vessel but none had involved fires. After fire erupted moments later, an explosion occurred. Fire was flashing from gas pocket to gas pocket, encompassing all of the rig except the immediate stern. Gas was igniting in the water as bubbles surfaced beneath and around the rig.

The fires aboard the vessel were not extinguished and blow-out did not cease until 2130 on December 5, 1973.

The vessel had aboard it a blow-out preventer, marine riser and shaker, all of which were operative and were not used. Had they been used, the blow-out would have been prevented. The lack of planning in emergency and rescue procedures was manifest and resulted in loss of life and injuries.

REASONS FOR GRANTING THE WRIT

I.

The criteria of *Lauritzen v. Larsen* are inapplicable to an American flag vessel duly enrolled and certificated by the United States Coast Guard.

A question which pervades the entire case is whether the limiting criteria of *Lauritzen v. Larsen,* 345 U.S. 571 (1953) may be applied under any circumstances to an American flag vessel duly enrolled and certificated by the United States Coast Guard. The District Court by implication may have applied this criteria. The court below did apply the criteria and as covered in other portions of this petition did so erroneously. The fundamental question remains as to whether *Lauritzen v. Larsen* may be applied under any circumstances to a vessel in this condition. As the Court said in *Lauritzen:*

"If read literally, Congress has conferred an American right of action which requires nothing more than that plaintiff be 'any seaman who shall suffer personal injury in the course of his employment.' It makes no explicit requirement that either the seaman, the employment or the injury have the slightest connection with the United States. Unless some relationship of one or more of these to our national interest is implied, Congress has extended our law and opened our courts to all alien seafaring men injured anywhere in the world in service of watercraft of every foreign nation — a hand on a Chinese junk, never outside Chinese waters, would not be beyond its literal wording.

But Congress in 1920 wrote these all-comprehending words, not on a clean slate, but as a postscript to a long series of enactments governing shipping. All were enacted with regard to a seasoned body of maritime law developed by the experience of American courts long accustomed to dealing with admiralty problems in reconciling our own with foreign interests and in accommodating the reach of our own laws to those of other maritime nations.

The shipping laws of the United States, set forth in Title 46 of the United States Code, comprise a patchwork of separate enactments, some tracing far back in our history and many designed for particular emergencies. While some have been specific in application to foreign shipping and others in being confined to American shipping, many give no evidence that Congress addressed itself to their foreign

> application and are in general terms which leave their application to be judicially determined from context and circumstance. By usage as old as the Nation, such statutes have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law." (at 577, 578).

It is hoary maritime principle that American law has always been operative when the flag of the vessel is American. *In re Ross,* 140 U.S. 453 (1891). *In re Ross,* this Court stated:

> "The position that the petitioner, being a subject of Great Britain, was not within the jurisdiction of the consular court, is more plausible, but admits, we think, of a sufficient answer. The national character of the petitioner, for all the purposes of the consular jurisdiction, was determinable by his enlistment as one of the crew of the American ship Bullion. By such enlistment he becomes an American seaman — one of an American crew on board of an American vessel — and as such entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen, and subject to all their obligations and liabilities. Although his relations to the British government are not so changed that, after the expiration of his enlistment on board of the American ship, that government may not enforce his obligation of allegiance, and he on the other hand may not be entitled to invoke its protection as a British subject, that relation was changed during his service of seaman on board of the American ship

> under his enlistment. He could then insist upon treatment as an American seaman, and invoke for his protection all the power of the United States which could be called into exercise for the protection of seaman who were native born. He owes for that time to the country to which the ship on which he is serving belongs, a temporary allegiance, and must be held to all its responsibilities. The question has been treated more as a political one for diplomatic adjustment, than as a legal one to be determined by the judicial tribunals, and has been the subject of correspondence between our government and that of Great Britain." (at 472).

In *Lauritzen v. Larsen,* the Court fashioned criteria under circumstances suitable when the vessel is not an American flag vessel. The court below could not cite a single case in which a seaman serving aboard such a vessel was denied Jones Act protection.

The Jones Act was a valid exercise by Congress to fill in the interstices of the general maritime law to insure that seamen had a remedy not heretofore available to them and to guarantee a right to trial by jury. As this Court said in *Panama Railroad Co. v. Johnson,* 264 U.S. 375, 392 (1924), the statute extends territorially as far as Congress can make it go and there is nothing to cause the reach of the statute to be otherwise than uniform.

An American flag vessel warrants the territorial reach and the uniformity of application of the Jones Act. The court below concedes that a "blue water" vessel would warrant an automatic application of the Jones Act regardless of the nationality of the crew. Its carving out an exception for oil drilling vessels

frustrates the will of Congress and the decisions of this Court. *In re Ross, supra; Panama Railroad Co. v. Johnson, supra; Texas Co. v. Gianfala,* 222 F.2d 382 (5th Cir. 1955), *rev'd,* 350 U.S. 879.

II.

The action by the court below violates the constitutional requirement of uniformity and constitutes an invalid amendment of the Jones Act by removing special purpose vessels from the reach of that act.

This petition is devoted to convincing this Court that the court below that heard this cause and rendered its decision on September 29, 1980 has promulgated by judicial legislation a significant amendment to the Jones Act. The opinion of the court below effectively bars foreign seamen from the reach of the Jones Act even where the employer is a citizen of the United States and the seamen are serving aboard an American flag vessel if that vessel is one designed to drill for oil.

The court below by its opinion has bifurcated the seamen into blue water seamen, and seamen employed on a special purpose vessel engaged in activities relating to the offshore exploration for oil, gas or other minerals, a distinction specifically rejected by the United States Supreme Court in *Texas Company v. Gianfala,* 222 F. 2d 382 (5th Cir. 1955), *rev'd,* 350 U.S. 370 (1957); *Grimes v. Raymond Concrete Pile Co.,* 356 U.S. 252 (1958); *Producers Drilling Co. v. Gray,* 361 F. 2d 432 (5th Cir. 1966) and *Offshore v. Robinson,* 266 F. 2d 769 (C.A.S. 1969).

The court below by its opinion has also bifurcated the seamen by the citizenship of their country. An American citizen who was injured on the Mariner I would be entitled to the

protection of the Jones Act while non-Americans, whether they be Trinidadians or from some other country would not be entitled to the Jones Act. The court below could not point to any authority which permits this distinction. The court below has dramatically and radically altered the existing law with this opinion.

The court below has by its opinion succeeded in accomplishing what some segments of the oil industry could not accomplish through Congress. H.R. 6705 is printed in the Appendix hereto (32a). This bill never emerged from committees. Despite claims from its proponents that the amendment was necessary for the prevention of double awards; the imposition of some sort of limit on skyrocketing maritime insurance costs; the enhancement of the competitiveness of United States concerns operating in foreign offshore areas; and a lessening of the burden on federal government employees who have been forced to process so many foreign claims, the emptiness of these assertions resulted in Congress refusing to tamper with the Jones Act, 46 U.S.C. §688, *et seq.* In fact, while this is not the forum to so argue it is submitted the reasons for the proposed amendment were specious.

The need to submit a proposed amendment to the existing Jones Act as contained in H.R. 6705 is indicative that without that amendment the Jones Act would be clearly applicable to foreign seamen on American flag and American-owned semi-submersible drilling rigs even in the waters claimed by other foreign sovereigns.

It is the purpose of this petition to argue that the court below not legislate where Congress refused to so do. The opinion of the court below recognizes that the Mariner I was a special purposes, submersible drilling vessel. It did not have a mode of power of its own and had to be towed to its drilling site.

It could, however, be moved by the placing of anchors and the utilization of ships' cable and the vessel's winches. Petitioners as crewmen aboard the vessel, in addition to their drilling chores, participated in the movement of the vessel when called upon. Some of the petitioners served as storemen and cook not only for the Trinidadians aboard the vessel but for other nationals.

The failure of Congress to act has been regarded by this Court as having significance. *Lauritzen v. Larsen*, 345 U.S. 571, 581 &7 L. Ed. 1254, 1267.

For the reasons that the court below has removed from the all-encompassing definition of what constitutes a vessel, a special purpose vessel capable of drilling for oil, a distinction which this Court specifically rejected in *Texas Company v. Gianfala*, should provide the need for this Court to grant certiorari to the Court of Appeals for the Ninth Circuit and the petitioners herein so pray.

III.

The court below has removed the foreign nationals serving on an American flag vessel from Jones Act jurisdiction in violation of the treaties of the United States and the case law of this Court and sister circuits on the dubious ground of weighing national interests.

Despite the unusual complexity of the case, its checkered career in reaching this Court, there is a stark simplicity to the legal issues involved. Put succinctly these are the propositions that have never heretofore been negatived at any court of this land.

1. That seamen in the service of an American flag vessel have the right and remedies of the Jones Act, 46 U.S.C. §688, *et seq.*

2. That whether a person serving aboard a vessel is in the service of that vessel so as to be accorded his rights under the Jones Act is a jury question.

Once a proper claim has been made under the Jones Act and there is coupled with its claims under the maritime law and sounding in admiralty there is warrant for a jury trial as to all issues. *Fitzgerald v. United States Lines,* 374 U.S. 16, 20, 21 L. Ed. 2nd 720, 724, 725.

All but two of the petitioners were payroll employees of Santa Fe Drilling Company, the owner of the vessel. In addition to their regular assigned duties, they also had responsibilities relating to the navigation and movement of the vessel such as handling and stowing lines. They assisted in victualing the vessel, getting stores aboard and providing meals. For seven days they slept and were fed aboard the vessel, subject to the discipline of the Master of Mariner I and the supervisory employees of the defendants relating to their duties as either "storekeepers or roustabouts".

The other two of the petitioners were employees of Schlumberger Trinidad Inc. ("Schlumberger"). They came aboard as specialists to provide logging services which assisted in the drilling operation, a purpose of the vessel. While aboard the Mariner I, they were subject to the discipline of the master of the vessel and also under the ultimate control of supervision of Amoco Trinidad. Their stay aboard the vessel extended over several days during which they slept and were victualed therein.

Put boldly the Court of Appeals for the Ninth Circuit has not disputed that these petitioners were aboard the vessel in the furtherance of the vessel's purpose and as such cannot really be distinguished from barbers, waitresses and musicians, who have been held to be members of the crew when their work aboard passenger vessels furthered the purpose of those vessels.

Cases involving vessels similar to the drilling rig in the instance case, where the rig was American owned not only found the non-American nationals assisting in the drilling process in the same status as the petitioners, the seamen, but also found that the Jones Act applied. *Bubetta v. Santa Fe Overseas, Inc.* and *Diaz v. Santa Fe Overseas, Inc.* (N.D. Calif. 1977), while not reported cases are found in Volume VI, page 1049 of petitioners' record on appeal. They involved Spanish nationals aboard respondent Santa Fe's vessel while in the territorial waters of Scotland. In refusing to dismiss on the grounds of *forum non conveniens* upon argument made that the injured seamen should submit to the jurisdiction of the courts of Scotland, the District Court said:

> "The Jones Act is applicable to this action under the test enunciated by the Supreme Court in *Lauritzen v. Larsen,* 345 U.S. 571 (1953), as clarified in *Hellenic Lines Ltd. v. Rhoditis,* 398 U.S. 306. The United States has substantial contacts with the current litigation, including the law of the flag, the allegiance of the defendant, and the law of the forum. The only Scottish contact is the place of the accident.
>
> Heavy weight must be given to the law of the flag because of the responsibilities of the flag nation to exercise its jurisdiction in a manner that comports with the maintenance of order and safety at sea. The current applicable treaty signed by both the United States and the United Kingdom (which binds Scotland) supports this Court's determination that the law of the flag be given heavy weight. *See* Convention on the High Seas of April 29, 1958, Art. 5, 450 U.N.T.S. 82, T.I.A.S. 5200; *see also* Gilmore & Black, *The Law of Admiralty,* 477 (2d ed 1975).

> Another important factor in the determination of this motion is the allegiance of the defendant. The defendant is an American corporation, which enjoys fully the privileges and protections of United States law. As such, the defendant must be expected to fulfill its obligation under United States law, including the Jones Act.
>
> In view of the substantial contacts necessary to justify the application of the Jones Act to a particular case,the doctrine of *forum non conveniens* may not be utilized to dismiss a Jones Act case from the courts of the United States. Congress has provided a sta[illegible]ory remedy for injured seamen and a plaintiff's decision to bring suit in the United States should not be disturbed when it is clear that Jones Act jurisdiction is properly invoked in accordance with *Lauritzen v. Larsen, supra.* See *Antypas v. Cia. Maritima San Basilio, S.A.*, 541 F. 2d 307 (2d Cir. 1976), *cert. denied,* 45 U.S.L.W. 3571 (Feb. 22, 1977)."

Bubetta and *Diaz* were decisions of the District Court of the Northern District of California. They are overruled by the opinion of the Ninth Circuit in the instant case. Their logic remains unaltered.

However, the United States District Court for the Southern District of Texas, Houston Division, in *Rego v. Santa Fe International Corporation,* H-77-634, a copy of which is attached as an Appendix to the brief herein (25a), a similar result was achieved. *See also, Farmer v. Standard Dredging Corp.*, 167 F. Supp. 381, 383-384 (U.S.D. Del. 1958). In the

Farmer case, the work was essentially of a very local character dredging a bay in Venezuela as distinguished from being offshore on the continental shelf. Farmer, the injured seaman, was an American.

It is therefore apparent that in most instances, the Jones Act status of an offshore oil worker can now be determined as a matter of law to be that of a Jones Act seaman. Where there is any doubt whatsoever, it becomes a question for the jury and as long as the offshore oil worker, whether he be a diver, roustabout, roughneck, driller or common laborer, if his status on the rig assists in the purpose of the rig, then the jury should infer that he is in fact a seaman and entitled to the protection of the Jones Act.

All the cases heretofore discussed pertain to American flag vessels. So far as can be determined because the question was not raised in those cases all the plaintiffs were American citizens and therefore there cannot be any doubt that any American citizens injured on the Mariner I as a result of this unfortunate episode would have by the clear case law been entitled to the protection of the Jones Act. There then arises a question as to whether a true issue of law can be framed by the fact that the petitioners in this case were citizens of Trinidad and Tobago and except for two of the remaining petitioners, they were all employees of Santa Fe Drilling Company, an American corporation with its admitted principal place of business in California as was admitted owner pro hac vice of the vessel. These men served seven days on and seven days off. During those seven days they were subject to the discipline of the Master of the vessel. They ate and slept aboard the vessel. The petitioners fulfilled the primary purpose of the vessel and even assisted in its navigation and in its fire prevention drills. This has been discussed in an authoritative text Norris, *The Law of Seamen*, Third Edition in Volume 2, Section 684. We quote:

"§684. Alien Seamen Injured on American Vessel. — The Jones Act makes no distinction between American seamen when injured while aboard an American flag vessel. The act speaks of injury to 'any seaman.'

Whether the injured seaman be an American or a foreign national is not important — the fact the vessel is an American ship, is. The obiter dictum of Judge Learned Hand in Taylor v. Atlantic Maritime Co.[1] is worthy of note. He stated: 'Under the ordinary convention, if a seaman is injured on the high seas, his rights are the same as though he had been injured within the country of the ship's flag; unless the owner be American. When a seaman signs articles in a foreign port for service on an American ship, and is injured on the high seas, there is no embarrassment, whether one regards the claim as sounding in tort, or in contract. So far as it sounds in tort, it depends upon American law — the law of the flag —; so far as it sounds in contract, although the law of the place where the contract is made will ordinarily apply, it is a well-recognized exception that in all that concerns the 'internal economy' of the ship the law of the flag controls." (Footnotes omitted.)

In sum total, there is simply no warrant for not treating Mariner I as a vessel, specialized as it may be, mobile, capable of floatation, sleeping and victualing a crew, but more important, the fact that in the archives of the United States Coast Guard this is a documented and enrolled vessel and as such subject to the laws of the United States relating to vessels upon navigable waters. In fact, the allegations of the plaintiff as to the

negligence of the ship owner and the unseaworthiness of this vessel is based upon multiple violations of regulations of the United States Coast Guard.

This petition is grounded upon the proposition that the injuries aboard an American international vessel duly registered, enrolled and subject to the jurisdiction of the United States Coast Guard and flying the American flag do not permit weighing of interests between the United States and Trinidad as a device to deprive these "seamen" from the application of the Jones Act.

The court below could not point to a single case in which these key factors have been disregarded. While the court below cites *House v. Santa Fe International Corp.*, 1978 A.M.C. 190 (S.D. Tex. 1978), the lawsuit brought there was not under the Jones Act, but under the general maritime law. The court below attempted to dissipate this important distinction by making reference to *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959). The fact is that *Romero* was a Spanish subject serving as a member of the crew of the S.S. Guadalupe, which was a vessel of Spanish registry, sailing under the Spanish flag, and was owned by a Spanish Corporation.

The court below has chosen to ignore the rule of law expounded in *Hellenic Lines Ltd. V. Rhoditis*, 398 U.S. 306 (1970) which held that if there was an American contact of substantiality in the course of the shipping operation, American law will apply, irrespective of the fact that the petitioner is an alien employed under a non-American flag. The place of injury was held to be of minor importance in the *Rhoditis* and the *Lauritzen* discussion and given little or no weight in *Romero*.

In *Rhoditis* the seaman was Greek, employed in Greece under Greek articles which provided that all claims would be

brought in Greece and decided under Greek law. He was injured on a Greek flagship. The vessel was owned by a Greek corporation, whose principal shareholder was a Greek citizen domiciled in New York. The majority stockholder as a registered alien was permitted to live and work in the United States and this plus the center of operations being located in the United States was deemed to be of sufficient significance to place upon *Rhoditis* the mantle of the Jones Act.

The Second Circuit in *Moncada v. Lemuria Shipping Corporation,* 491 F. 2d 470 (2d Cir. 1974), *cert. denied,* 417 U.S. 947, dealt with a foreign seaman injured in Brazil aboard a foreign-owned, foreign flagship. The foreign shipping corporation was wholly owned by American stockholders. The court also found that the United States was the base of operations and that the location of the managing or chartering agent and the nationality of the corporate officers was important. The Jones Act was applied.

Also in the Second Circuit, in *Antypas v. Cia Maritima San Basilio S.A.,* 541 F. 2d 307 (2d Cir. 1976), *cert. denied,* 427 U.S. 1098, a Greek seaman was injured on a foreign flag vessel while it was on the high seas between Hamburg and the Far East. The Second Circuit Court of Appeals reversed the District Court decision and found the Jones Act to apply because the managing agent of the vessel was a New York corporation owned by American citizens and such interests provided a substantial American business contact so as to predominate over such factors as the ship's flag, the place of incorporation of the shipowner and the seaman's nationality.

While the foreign flag has in the light of substantial American contact been overlooked, never have the American flag or the American ties of allegiance been disregarded as they have been in the instant case. The court relies upon two Third

Circuit decisions, *DeMateos v. Texaco, Inc.*, 562 F. 2d 895, *cert. denied*, 435 U.S. 904 (1978) and *de Alvarez v. Creole Petroleum Corporation*, 613 F. 2d 1240. However, in *DeMateos* the flag was Liberian and the corporation Panamanian. In *de Alvarez* the flag was Venezuelan and plaintiff's decedent was serving aboard a vessel registered under Venezuelan law and the place of operation was arguably Venezuela. In *DeMateos* it was contended that the operating corporation, a non-American corporation, was domiciled in Monaco.

While we disagree that the interests of the United States are weaker and less substantial than the interests of Trinidad, we respectfully submit that that is not the test. The test is whether the contacts of the United States with the transaction were substantial. We submit they were. Apart from the flag and the allegiance to the respondent which we have previously discussed, the United States sovereignty over the vessel was never relaxed. The United States Coast Guard investigated this occurrence and issued findings of fact and conclusions of law based upon the said investigation and also demonstrated various violations and proposed disciplinary proceedings against the master and owner and operator of the vessel as a result of the occurrence in question.

The court below admits that under its decision, Americans serving aboard the Mariner I at the time of the catastrophe would be entitled to the application of the Jones Act though it would deny such application to the petitioners. It brushes off petitioners' contention of unfairness by saying that it knows no authority for the view that a foreign seaman may predicate a right to have American law applied equally to him as it would to an American citizen. It is more important that never before has a court asserted a double standard giving foreign seamen lesser rights. We submit this is a new doctrine ill-founded and dangerous in its application.

In *Farmer v. Standard Dredging Corp.*, 167 F. Supp. 381 (U.S.D. Del. 1958), an American seaman was working aboard an American-owned dredge under the American flag in a Venezuelan bay. In that case argument was made that under principles of comity, the courts in the United States should honor Venezuelan law and deny Jones Act jurisdiction. To the court in *Farmer, supra,* this view was not acceptable. The court said in its opinion:

> "Here the connection between the injury and the parties involved is at least as closely identified with the United States as with Venezuela. As against the circumstances that the injury occurred during an employment exclusively within foreign territorial waters, the United States citizenship of the parties and the United States registry of the vessel are considerations of paramount importance which require that Jones Act relief be recognized when a maritime tort has occurred." (at 384).

It could perhaps be argued that in the *Farmer* case, the injured seaman was an American. There were Americans working aboard the Mariner I at the time of this unfortunate episode. To avail the American citizens the Jones Act and deny the same rights to non-American citizens would court a double standard.

We submit that under the treaties of the United States, this is not permissible. In an excellent article in Volume I Winter, 1977, *The Hastings International and Comparative Law Review,* 91, the writer there points out:

> "Treaty law also supports the position of Mr. Justice Clark in *Antypas.* Article 11 of the Shipowner's Liability Convention[3] states: 'This

> Convention and national laws or regulations relating to benefits under this Convention shall be so interpreted and enforced as to ensure equality of treatment to all seamen irrespective of nationality, domicile or race.'[4]
>
> One can support the *Antypas* holding by arguing as follows: If we can assume that an American plaintiff's action against an American defendant would rarely be dismissed under any circumstances on the ground of forum non conveniens, it follows that under Article 11 the complaints of foreign seamen should be treated no differently." (Footnotes omitted.)

The court below has engrafted upon the maritime law the dangerous bifurcation of rights based upon national origin. The opportunity for mischief is manifest. Panama still rankles from the days of the double standard when American workmen in the Canal Zone were paid in gold and Panamanians were paid in silver. Lesions thus caused took a long time to heal, if at all. It is respectfully prayed that this Court grant certiorari to the Court of Appeals for the Ninth Circuit so that this new discriminatory aspect of the maritime law which finds no support elsewhere in the judicial system be nipped in the bud. It is almost anticlimactic to point out that it is directly contrary to the decisions of the Court of Appeals for the Second Circuit and this Court. *Lauritzen v. Larsen*, 345 U.S. 571 (1953); *Antypas v. Cia Maritima San Basilio, S.A.*, 541 F. 2d 307 (2nd Cir. 1976), *cert. denied*, 429 F. 2d 1098 (1977); *Moncada v. Lemuria Shipping Corporation*, 491 F. 2d 470 (2d Cir. 1974), *cert. denied*, 417 U.S. 947; *Hellenic Lines v. Rhoditis*, 412 F. 2d 919 (5th Cir. 1969) 398 U.S. 306, 26 L. Ed. 2nd 252 (1970).

CONCLUSION

The clarity of the maritime law and the reach of the Jones Act as a remedial statute has been made murky by the gratuitous action of the Court of Appeals for the Ninth Circuit in denoting different standards as they apply to American nationals and non-American nationals. In *Gianfala v. Texas Co.*, 359 U.S. 879 (1955), this Court reversed the Court of Appeals for the Fifth Circuit where by implication it drew an exception for an oil drilling vessel. It is prayed that this Court will grant the petition for certiorari and do likewise. In sum total the decision of the court below is in conflict with decisions of this Court and as aforementioned other courts of appeals circuits and treaties of the United States. In addition, it seeks to engraft upon the general maritime law and the Jones Act, principles foreign to its broad remedial features.

Respectfully submitted,

AVRAM G. ADLER
ADLER, BARISH,
LEVIN & CRESKOFF
Attorneys for Petitioners

AVRAM G. ADLER
STANLEY P. KOPS
ANNE E. FIALKOWSKI
On the Brief

APPENDIX

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED SEPTEMBER 29, 1980

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BETHILDA BETTY PHILLIPS, WIDOW AND PERSONAL REPRESENTATIVE OF WALTER PHILLIPS, DECEASED,
Plaintiff-Appellant,

-vs-

AMOCO TRINIDAD OIL COMPANY, and SANTA FE DRILLING COMPANY,
Defendants-Appellees.

No. 78-2672

D.C. No. CV 74-2651-LTL

Appeal from the United States District Court for the Central District of California

Lawrence T. Lydick, District Judge, Presiding

Argued and submitted May 5, 1980

Before WALLACE and SCHROEDER, Circuit Judges, and CORDOVA,* District Judge

WALLACE, Circuit Judge:

---

* Honorable Valdemar A. Cordova, United States District Judge, District of Arizona, sitting by designation.

Plaintiffs appeal from a district court determination that the law of Trinidad, rather than United States maritime law, applies to two wrongful death actions and 12 personal injury actions filed on behalf of citizens and domiciliaries of Trinidad against Amoco Trinidad Oil Co. (Amoco Trinidad) and Santa Fe Drilling Co. (Santa Fe). The district court certified its order for interlocutory appeal pursuant to 28 U.S.C. §1292(b), and we granted plaintiffs' petition for permission to appeal. Finding that the district court properly applied controlling choice-of-law principles, we affirm.

I.

The accident giving rise to this litigation occurred on December 5, 1973, during the course of exploratory drilling operations with the drilling rig Mariner I. Plaintiffs brought their claims pursuant to the Jones Act, 46 U.S.C. §688.

Mariner I is a special-purpose, submersible drilling vessel which must be towed to its drilling site. The rig was documented under the laws of the United States and flew an American flag. It was also licensed to operate in Trinidad waters by the government of that nation. At the time of the accident, Mariner I was drilling under contract to Amoco Trinidad, 10.5 miles from the Trinidad coast, in that nation's territorial waters. Indeed, Mariner I worked exclusively offshore of Trinidad from February 1970 to March 1976.

Santa Fe owns and operates Mariner I. It is an American-based corporation with headquarters in Orange, California. Although the Orange headquarters monitored and maintained some control of the operation of Mariner I, day-to-day operational decisions were made by Santa Fe staff in Trinidad. Plaintiffs also allege that Amoco Trinidad is an owner of

Mariner I. Amoco Trinidad is a Delaware corporation, with its principal offices and places of business in Trinidad. The president of Amoco Trinidad resides in Trinidad, where all operational decisions are made.

Eleven of the injured workers were Santa Fe employees. The remaining three were employed by Schlumberger Trinidad, Inc., a Panamanian corporation, not party to this litigation. Plaintiffs are all citizens and domiciliaries of Trinidad. The Santa Fe employees were hired pursuant to a collective bargaining agreement between Santa Fe and the local Trinidad Oil Field Workers Union. The Trinidad government controlled the make-up of Mariner I's work force by limiting the number of work permits for non-Trinidad nationals. A Trinidad statute directs that the civil law of Trinidad applies to any acts or omissions occurring in the course of the exploration or exploitation of its continental shelf.

II.

The question presented is whether the district court correctly determined that the law of Trinidad, rather than the Jones Act, applies to this case. This is a question of law subject to our *de novo* review.

Plaintiffs contend that the Jones Act applies whenever a claimant can show that he is a "seaman" as defined by the statute. 46 U.S.C. §688.[1] Read literally, the Act would provide that an injured seaman of any nationality could maintain an action against any party over whom he could gain personal jurisdiction. But courts have never applied the Jones Act as broadly as a literal reading of it would require. The Supreme Court has indicated that the Jones Act applies "only to areas and transactions in which American law would be considered

operative under prevalent doctrines of international law." *Lauritzen v. Larsen,* 345 U.S. 571, 577 (1953). Thus, we must first determine, by the application of relevant choice-of-law criteria, whether the Jones Act applies in the particular factual setting of this case. *See Romero v. International Terminal Operating Co.,* 358 U.S. 354, 382 (1959); *Lauritzen v. Larsen, supra,* 345 U.S. at 576-83; *Chirinos de Alvarez v. Creole Petroleum Corp.,* 613 F.2d 1240, 1245-46 (3d Cir. 1980); *Moncada v. Lemuria Shipping Corp.,* 491 F.2d 470, 472 (2d Cir.), *cert. denied,* 417 U.S. 947 (1974).

A. Lauritzen *and* Rhoditis

The relevant considerations for maritime choice-of-law decisions were set forth and applied in *Lauritzen v. Larsen, supra,* 345 U.S. 571, and *Hellenic Lines, Ltd. v. Rhoditis,* 398 U.S. 306 (1970). In *Lauritzen,* the Supreme Court enumerated seven factors that bear on whether the Jones Act applies: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured; (4) the allegiance of the defendant shipowner; (5) the place of contract; (6) the inaccessibility of the foreign forum; and (7) the law of the forum. *Lauritzen* taught that the appropriate law to apply would be determined by "ascertaining and valuing [the enumerated] points of contact between the transaction and the states or governments whose competing laws are involved." 345 U.S. at 582.

As the only factor pointing toward the application of American law in *Lauritzen* was the place where the plaintiff's maritime contract was signed, it was clear that the Jones Act did not apply. Nevertheless, the Court provided some general guidelines to consider in the "valuing" and "weighing" of the various factors. *Id.* Among other things, the Court in *Lauritzen* stressed that the law of the flag is generally of cardinal

importance in maritime choice-of-law decisions, *id.* at 584-86, and it suggested that the last two enumerated factors should be given very little weight. *Id.* at 589-91.

In *Hellenic Lines, Ltd. v. Rhoditis, supra,* 398 U.S. 306, the Supreme Court found that the Jones Act applied to a Greek seaman's claim, although most of the *Lauritzen* factors, including the law of the flag, pointed toward the application of foreign law.[2] *Rhoditis* not only stressed that "[t]he *Lauritzen* test . . . is not a mechanical one," 398 U.S. at 308, but found that "the list of seven factors in *Lauritzen* was not intended as exhaustive." *Id.* at 309. Announcing an additional "base of operations" test, the Court found that the connection between this country and the subject ship's commercial and shipping operations was substantial enough to warrant application of the Jones Act. *Id.* at 309-310.

B. *The Nature of the Test*

The parties before us disagree on the weight to be accorded the various relevant connections between the United States and the maritime operations of Mariner I. Some of this disagreement stems from contrasting interpretations of *Lauritzen* and *Rhoditis.*

The parties agree that the choice-of-law test is not a mechanical one and that the factors are not necessarily accorded equal weight. *Lauritzen v. Larsen, supra,* 345 U.S. At 582; *Hellenic Lines, Ltd. v. Rhoditis, supra,* 398 U.S. at 308-09. Courts have also indicated that particular factors will merit varying degrees of consideration from case to case. *See Moncada v. Lemuria Shipping Corp., supra,* 491 F.2d at 472; *House v. Santa Fe Int'l Corp.,* 1978 A.M.C. 1899, 1902 (S.D.

Tex. 1978). Factors that have little significance in one factual setting may warrant greater weight in another.

Plaintiffs place great weight on the statement in *Rhoditis* that "[t]he significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction." 398 U.S. at 309 (footnote omitted). We agree that the *Lauritzen* factors should be applied with sensitivity to the national interest that may be served by the assertion of American maritime law in a particular case. Yet we do not read *Rhoditis* as undercutting the equally valid teaching of *Romero v. International Terminal Operating Co., supra,* that the *Lauritzen* factors should be applied "with due recognition of our self-regarding respect for the relevant interests of foreign nations . . . " 358 U.S. at 382-83.[3] *See also Lauritzen v. Larsen, supra,* 345 U.S. at 582; *DeMateos v. Texaco, Inc.,* 562 F.2d 895, 901 (3d Cir. 1977), *cert. denied,* 435 U.S. 904 (1978).

The plaintiffs' apparent belief that the crux of choice-of-law analysis is the abject furtherance of American interests leads them to urge an unrealistic interpretation of language in certain Second Circuit decisions. The Second Circuit has stated that "each factor is to be 'weighed' and 'evaluated' only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality." *Bartholomew v. Universe Tankships, Inc.,* 263 F.2d 437, 441 (2d Cir.), *cert. denied,* 359 U.S. 1000 (1959), *quoted in Hellenic Lines, Ltd. v. Rhoditis, supra,* 398 U.S. at 309 n. 4. Under this "substantiality" test, the "task is not to weigh or balance present against absent contacts, but merely to determine whether the contacts which are present are substantial." *Moncada v. Lemuria Shipping Corp., supra,* 491 F.2d at 472.

We accept that *Lauritzen* does not require us to balance present against absent connections between the United States and the relevant transaction. There is little doubt that sufficient American interest in a particular transaction can rest on the presence of one or more important contacts between that transaction and this country. But this does not imply that the substantiality of this nation's interests is to be measured in a vacuum. Substantiality is a relative term, and *Lauritzen* requires that we compare the substantiality of our interest in a given transaction with that of other nations. In defining "the domain which each nation will claim as its own," we are instructed to value "points of contact between the transaction and *the states or governments whose competing laws are involved.*" *Lauritzen v. Larsen, supra,* 345 U.S. at 582 (emphasis added). Although the Jones Act may be far-reaching under certain circumstances, there is also no doubt that "when the links to the United States are weak and the interests of another sovereign are substantial, the Jones Act is not applicable." *Chirinos de Alvarez v. Creole Petroleum Corp., supra,* 613 F.2d at 1246. This is a comparative, and not an absolute, evaluation.

III.

We next apply the factors elucidated in *Lauritzen* and *Rhoditis* in light of the foregoing principles. Our comparison of the points of contact between this transaction and the two nations persuades us that the interests of the United States are weaker and less substantial than the interests of Trinidad. Our analysis turns in large part on Trinidad's strong interest in the conduct of the Mariner I offshore drilling operation. As we indicated above, we are required to determine the weight which should appropriately be given the various factors in the factual setting of this particular transaction. Having done so, we agree with the district court that the law of Trinidad applies.

Factors unambiguously pointing toward the application of American law, and hence the Jones Act, include the law of the flag, the allegiance of the defendant shipowner, and the law of the forum. If this were a typical maritime case involving a vessel sailing in international commerce, it would appear that American law would apply.[4] We have determined, however, that the law of the flag should not be accorded controlling weight because of the facts of this case.

In *Lauritzen*, the Court stated that the law of the flag has traditionally been accorded great weight "on the pragmatic basis that there must be some law on shipboard, that it cannot change at every change of waters, and no experience shows a better rule than that of the state that owns her." 345 U.S. at 585. This rationale does not apply to a drilling vessel whose operations are at a fixed location. Here the locus is unchanging, and the logic of local experience can profitably be applied to the claims of these Trinidad nationals. That these workers were injured immediately offshore of Trinidad is no fortuity, unlike the place of injury on a commercial sailing vessel.

Because of the nature of the operations in this case, we place greater weight on the place of the wrongful act than did the Court in *Lauritzen* on different facts. We agree with the analysis of the District Court of Maryland in confronting facts similar to ours:

> The *Lauritzen* case recognizes that the most commonly accepted basis in international law for selecting tort rules of decision is by reference to the place where the liability arose. This reflects the strong interest of a nation in the activity which goes on within its sovereign territory. [*Lauritzen*] noted, however, the impracticality of

> such a rule when applied "to an enterprise conducted under many territorial rules and under none," and observed that the "more constant law of the flag" is ordinarily applied to vessels which ply international waters from port to port. But such pragmatic considerations do not make the interest of a sovereign in activities occurring within its borders any less. Where, as here, the enterprise giving rise to the liability is conducted solely within one jurisdiction, that interest should be given substantial weight . . . in making a choice of law decision.

de Alvarez v. Creole Petroleum Corp., 462 F. Supp. 782, 787 (D. Del. 1978), *aff'd sub nom. Chirinos de Alvarez v. Creole Petroleum Corp., supra*, 613 F.2d 1240 (footnote omitted).[5]

For similar reasons, we place greater weight on the allegiance and domicile of these workers and on the place of contract than on the allegiance of the defendant shipowner. *Lauritzen* stated that "each nation has a legitimate interest that its permanent inhabitants be not maimed or disabled from self-support." 345 U.S. at 586. And, although the allegiance of the injured seaman has not always been given controlling weight, *e.g., Hellenic Lines, Ltd. v. Rhoditis, supra*, 398 U.S. 306, there are substantial reasons for placing greater emphasis on this factor here. The workers here were Trinidad nationals whose employment never took them beyond its territorial boundaries. *See Chirinos de Alvarez v. Creole Petroleum Corp., supra*, 613 F.2d at 1247. Moreover, the Santa Fe workers were hired through a local labor union and their numbers were fixed by the law of Trinidad. The other workers were also citizens of Trinidad who were employed by the non-party Panamanian corporation.

The place of contract also assumes added significance in this case, because of the fixed location of the employment and the workers' consequent reasonable expectations as to the governing law.[6] Whereas the place of contract of the typical seaman is fortuitous, since "a ship takes on crew in any port where it needs them," *Lauritzen v. Larsen, supra,* 345 U.S. at 588, the allegiance and place of contract of these workers was uniform, predictable, and unchanging.

Our analysis and application of the base-of-operations test suggested by *Rhoditis* confirms our conclusion that this transaction is within the domain of Trinidad's laws. Plaintiffs observe that in *Rhoditis* the Court focused on the "*shipowner's*" base of operations, 398 U.S. at 309, and argue that the relevant base of operations of Santa Fe is the United States. It is true that Santa Fe is based in Orange, California, and that its Orange offices were involved in monitoring and controlling the overall operations of Mariner I. We conclude, however, that the more relevant and important base of operations for determining choice-of-law in this case is in Trinidad. We thus follow cases that have focused on the base of operations of the relevant business venture rather than of the corporate owner of the vessel. This is consistent with the injunction that we weight the "connecting factors between the *shipping transaction regulated* and the national interests served by the assertion of authority." *Lauritzen v. Larsen, supra,* 345 U.S. at 582 (emphasis added). *See DeMateos v. Texaco, Inc., supra,* 562 F.2d at 902; *de Alverez v. Creole Petroleum Corp., supra,* 462 F. Supp. at 786 n. 11;[7] *House v. Santa Fe Int'l Corp., supra,* 1978 A.M.C. at 1905.

In making this judgment, we emphasize that Mariner I was conducting a substantial and rather permanent operation under license from the Trinidad government within the territory of that

nation. The day-to-day operation was conducted and supervised by the Santa Fe staff in Trinidad. In *House v. Santa Fe Int'l Corp., supra,* which concerned an accident involving an oil rig operation similar to the one before us here, the United States offices of the defendant American corporation controlled the finances, hiring, making of contracts, and purchase of supplies and replacement parts. 1978 A.M.C. at 1904. The drilling rig was also an American-flag vessel. Nevertheless, the court found that "the matters concerning ownership of the vessel and corporate relationships are intangible to the point of being ephemeral in the face of the tangible, operative factors" showing that the overall transaction was more closely connected to Great Britain. *Id.* at 1905. We think that similar analysis is persuasive.[8]

Finally, we address arguments of the plaintiffs that go beyond the scope of the factors outlined in *Lauritzen* and *Rhoditis.* Plaintiffs contend that the United States has a strong interest in applying American law to a vessel which it has registered. They observe that their claim is founded in part on Mariner I's alleged violation of safety requirements of its Coast Guard Certificate of Inspection and contend that the United States has a significant stake in assuring compliance. We conclude that this asserted regulatory interest should not be given significant weight beyond the consideration already given the law of the flag in balancing the relevant contacts. Plaintiffs' argument ignores that Mariner I also operated under license from the government of Trinidad. Trinidad statutory law dictates that its own civil law applies to all accidents that occur while exploiting its continental shelf. The question before us is whether the United States or Trinidad has the greater interest in having its legal standards applied to these facts. Trinidad has the greater interest.

The plaintiffs also urge that it would be unfair to deny the benefits of American law to these Trinidad nationals and that the Jones Act would apply if these workers were American citizens. *See Farmer v. Standard Dredging Corp.*, 167 F. Supp. 381, 383 (D. Del. 1958). But the allegiance of the injured seaman has always been viewed as a relevant and important consideration in determining the appropriate law to apply. We know of no authority for the view that foreign nationals may predicate a right to have American law applied on the rights of similarly situated American Citizens. The suggestion that one follows from another is another "variety of social jingoism, which presumes that the 'liberal purposes' of American law must be exported to wherever our multinational corporations are permitted to do business." *DeMateos v. Texaco, Inc., supra,* 562 F.2d at 902; *Chirinos de Alvarez v. Creole Petroleum Corp., supra,* 613 F.2d at 1247-48. We are convinced that there is no unfairness to these plaintiffs in applying the law of the nation that clearly has the most substantial interest in their claims.

AFFIRMED.

FOOTNOTES

1. Section 688 states in part: "Any seaman who shall suffer personal injury in the course of his employment may . . . maintain an action for damages at law . . . ." 46 U.S.C. §688.

2. In *Rhoditis,*

> the plaintiff was a Greek citizen who, while in Greece, signed on as a seaman on a ship owned by a Greek corporation. His contract of employment provided that Greek law and a Greek collective-bargaining agreement applied to claims arising out of his employment. Rhoditis, the plaintiff, was injured while on board the ship in the Port of New Orleans. The record showed that the Greek corporation Hellenic Lines, was owned by a United States domiciliary, a lawful permanent United States resident alien, who was a Greek citizen. Hellenic Lines' largest offices were in New York and another was in New Orleans. The corporation's owner lived in Connecticut and managed the corporation out of New York. The record also showed that "its entire income is from cargo either originating or terminating in the United States." 398 U.S. at 308, 90 S. Ct. at 1733.

Chirinos de Alverez v. Creole Petroleum Corp., 613 F.2d 1240, 1246 n. 7 (3d Cir. 1980).

3. Although *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), involved claims under general maritime law, rather than the Jones Act, the Court made it clear that the same analysis applies to both. "[T]he similarity in purpose and function of the Jones Act and the general maritime principles of compensation for personal injury, admit of no rational differentiation of treatment for choice of law purposes." *Id.* at 382.

4. In *Lauritzen v. Larsen*, 345 U.S. 571, 585 (1953), the Court stated that "the weight given to the ensign overbears most other connecting events in determining applicable law." Although the law of the flag was not given controlling weight in *Rhoditis*, where the Court applied American law to a foreign-flag ship, commentators have generally assumed that American maritime tort law will follow the flag. *See, e.g.*, G. Gilmore & C. Black, The Law of Admiralty 477 (2d ed. 1975); 2 M. Norris, The Law of Seamen §684 (3d ed. 1970).

5. Although the vessel involved in *Creole Petroleum Corp.* did not fly an American flag, the court's analysis is still helpful.

6. The Santa Fe workers had signed contracts of hire that stipulated that the law of Trinidad would apply to claims arising out of their employment. Although such a clause was not weighted heavily in *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306 (1970), we think the clauses here reflect the reasonable expectations of these Trinidad workers.

7. In *Creole Petroleum, supra*, the Third Circuit did not rely on the district court's conclusion that the more relevant base of operations was that of the particular maritime operation in question. *See* 613 F.2d at 1247. This was because Creole Petroleum's general base of operations, like defendant Amoco

Trinidad's, was clearly not in the United States. Nevertheless, we find the reasoning of the district court to be persuasive.

8. We reject plaintiff's contention that *House* is distinguishable as involving only general admiralty claims rather than claims arising under the Jones Act. *See* note 3, *supra.*

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED NOVEMBER 24, 1980

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 78-2672

D.C. No. CV 74-2651-LTL

BETHILDA BETTY PHILLIPS, WIDOW AND PERSONAL REPRESENTATIVE OF WALTER PHILLIPS, DECEASED,

Plaintiff-Appellant,

-vs-

AMOCO TRINIDAD OIL COMPANY, and SANTA FE DRILLING COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of California

Before: WALLACE and SCHROEDER, Circuit Judges, and CORDOVA,* District Judge.

The panel as constituted above has voted to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing en banc is rejected.

---

* Honorable Valdemar A. Cordova, United States District Judge, District of Arizona, sitting by designation.

REPORTER'S TRANSCRIPT OF PROCEEDINGS DATED OCTOBER 31, 1977

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE LAWRENCE T. LYDICK, JUDGE PRESIDING

CV 74-2651-LTL

BETHILDA BETTY PHILLIPS, et al.,

Plaintiffs,

vs.

AMOCO TRINIDAD OIL COMPANY and SANTA FE DRILLING COMPANY,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PLACE: Los Angeles, California

DATE: Monday, October 31, 1977

SUSAN PALMERTON
Reporter Pro Tem
442-D U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 624-0402

Transcript of Proceedings

APPEARANCES:

On behalf of Plaintiffs:

AVRAM G. ADLER, ESQ.
Rohm & Haas Building, 2nd Floor
Sixth and Market Streets
Philadelphia, Pennsylvania 19106

and

BODLE, FOGEL, JULBER,
REINHARDT AND ROTHSCHILD
(No appearance)
5900 Wilshire Boulevard, Suite 2600
Los Angeles, California 90036
(213) 937-6250

On behalf of Defendants:

McCUTHEN, BLACK, VERLEGER &
SHEA
BY: WILLIAM SCHROEDER
MICHAEL SHANNON
3534 Wilshire Boulevard
Los Angeles, California

and

PHELPS, DUNBAR, MARKS,
CLAVERIE & SIMS
(no appearance)
Hibernia Bank Building
New Orleans, Louisiana 70112
(504) 529-1311

Transcript of Proceedings

LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 31, 1977; 10:00 A.M.

(Other court matters.)

THE COURT: Next case, Kim.

THE CLERK: Yes, your Honor.

Item 5 on the calendar, Case No. CV 74-2651-LTL: Bethelda Phillips vs. Amoco Oil Company, et al.

Appearances, please, counsel.

MR. ADLER: Avram G. Adler, your Honor, for the plaintiffs.

MR. SCHROEDER: Bill E. Schroeder and Michael Shannon for the defendants.

THE COURT: No appearance by Phelps, Dunbar and Marks, et al.?

MR. SCHROEDER: Your Honor, we will be filing today — I have and I can lodge with the Court today a substitution of attorneys substituting the firm of McCutchen, Black, Verleger & Shea instead of Phelps, Dunbar.

THE COURT: Any objection to that?

MR. ADLER: No, your Honor.

THE COURT: All right. This matter is before the Court on, first, defendant's motion to apply the law of Trinidad and

Tobago rather than the law of the United States to this action and defendant's motion to continue trial of this action presently set for November 1, 1977, tomorrow.

The motions have been fully briefed by counsel. We have reviewed and considered all of the material contained therein. Does anyone wish to be heard further?

MR. SCHROEDER: Your Honor, we have argued the motions at length on October 11. We have set out again the — our position that the matter is one properly determined by the Court prior to trial, and I really have nothing to add in addition to the matters that were argued to the Court on October 11.

THE COURT: Thank you, counsel.

Mr. Adler?

MR. ADLER: Yes. If I may just answer a couple items in the reply brief, and I'll be very brief, your Honor.

For instance, the Serrano case, which is cited in their reply brief, sets forth the precise position according to plaintiffs, and that is that if there is a — that the rule that all plaintiffs and all defendants must be of separate citizenship does not apply where the Court otherwise would have jurisdiction. And that's a case cited by the defendants themselves.

The only other thing I would say is —

THE COURT: You're familiar with that case, aren't you?

MR. ADLER: Yes, your Honor.

THE COURT: On the briefs?

MR. ADLER: Pardon me, sir?

THE COURT: Wasn't that the one you were on the briefs?

MR. ADLER: No, sir.

THE COURT: Excuse me.

MR. ADLER: That was DeMateos, your Honor, which was inapplicable —

THE COURT: That's right. Excuse me.

MR. ADLER: That was inapplicable. That was not an American flag vessel, and this is an American flag vessel, at least from the plaintiff's viewpoint.

The other thing, your Honor, is Lauritzen vs. Larsen, which they've again raised in their reply brief, and having read Lauritzen vs. Larsen coming down on the plane today, it clearly sets forth that if it is an American flag vessel, American maritime law will be applied regardless of where that vessel is. And I think that's dispositive of the issues here, your Honor.

MR. SCHROEDER: Your Honor, if I may?

THE COURT: All right.

MR. SCHROEDER: in reply to that, the defendants' motion today is a motion that the law of Trinidad and Tobago be applied to this case, that there not be a remedy afforded to the plaintiff under the Jones Act.

It is also set forth in the papers and noticed as a request to the Court that if it is determined that the law of Trinidad and Tobago apply, that plaintiffs then are not entitled to a jury trial. This case being designated as one in admiralty, and if the Jones Act does not apply, then there is no jurisdictional basis in this Court other than admiralty and there is no right to a jury trial in admiralty.

THE COURT: Is that it, gentlemen?

MR. ADLER: Yes. I briefed that, your Honor.

THE COURT: At the outset, we are faced with plaintiffs' contention that the choice of law decision herein should be delayed until the conclusion of trial and perhaps a contention that it be decided by the jury. We determined that it is appropriate, if not required under the circumstances here found, that we make our determination on the issue raised by this motion prior to trial.

Having so concluded, we turn to the motion itself. The problem is not simplified by the fact that, although the drilling rig is a documented vessel, it is fundamentally different from ships that travel the high seas since it is basically stationary and its drilling function occurred only with the license of the country off whose shore it was drilling.

Another significant factor differentiating it from the ordinary vessel is that personnel aboard it perform tasks more associated with drilling an oil well than with operating a seagoing vessel. As a result, a real issue exists as to whether or not plaintiff was a seaman entitled to the special protection of our Jones Act, 46 U.S.C. 688. These are only two of many factors that distinguish this case from the usual admiralty action.

On this motion, however, we reach only the limited choice of law question of whether the law of Trinidad and Tobago or American law applies to this action and so limit our conclusion without deciding the Jones Act, the Death on the High Seas Act or other American maritime law is applicable here if Trinidad and Tobago law is not.

In deciding this question, we must rely primarily on the various circuit readings of Lauritzen vs. Larsen, 345 U.S. 571 (1953) and Hellenic Lines vs. Rhoditis, 398 U.S. 306 (1970) and our own reading thereof.

In the totality of the circumstances of this case, factually distinguishable from Lauritzen and Hellenic Lines as well as from any circuit decisions that have come to our attention, we believe the law of Trinidad and Tobago to be the correct choice of law and to that extent grant defendants' motion.

We do not give extended reasons for our conclusion, commenting only that it is based on the factors and respective weights assigned thereto by the Supreme Court in its above-noted decisions and those of the various courts of appeal, as well as our own view that here the "law of the flag" factor does not assume the cardinal importance or the overbearing effect assigned to it in those decisions when weighed against the doctrine of lex loci delicti commissi, the allegiance and domicile of the injured and other relevant factors we are required to consider.

Finally, we freely state that, like Justice Jackson, we have not stopped to inquire which law does whom the greater or lesser good. Indeed, we do not as yet know the law of Trinidad and Tobago, profess no expertise regarding even American

admiralty law, and despite intensive study, still must abide with considerable concern as to whether or not we have best applied those choice of law principles we have studied.

We turn next to defendants' motion to continue the trial of the first of these fourteen related cases, No. 74-2656, to a date thirty days after our ruling of today.

It appears to us that, in view of our ruling, counsel should be given an opportunity to analyze its effect on their trial preparation as well as previously submitted memoranda of facts and legal contentions and the Pretrial Conference Order in effect. In addition, we are aware that the determination and application of Trinidad and Tobago law by us presents unusual problems.

Accordingly, the motion to continue trial is granted in part and denied in part. Trial of action No. 74-2656 is continued to a date to be set. Counsel are ordered to file with us not later than November 25 separate memoranda of points and authorities briefing us with respect to the effect of our ruling on the conduct of the trial of the action, the Trinidad law applicable thereto, proposed methods of determination of such law and such other matters as they may deem appropriate. Each side may have to December 9, 1977, to respond to the other's memorandum.

Are those dates agreeable, counsel?

MR. SCHROEDER: Yes, your Honor.

MR. ADLER: Yes, your Honor.

* * *

MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS IN *REGO v. SANTA FE INTERNATIONAL CORPORATION, ET AL.*

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. H-77-634

V. Bailey Thomas, Clerk
U.S. District Court

MANUEL SANTOS REGO

V.

SANTA FE INTERNATIONAL CORPORATION, ET AL.

Memorandum and Order:

The plaintiff, Manuel Santos Rego, has filed this personal injury claim under 46 U.S.C. §688, commonly known as the Jones Act.

Mr. Rego is a Spanish national who was hired by Santa Fe International Services, Inc. (hereinafter referred to as "SFISI") in its Rotterdam office. He was employed to work as a rigger on the "Cherokee," a barge operating in the North Sea. On or about May 20, 1976, the plaintiff was injured while working aboard the barge.

Defendant Santa Fe International Corporation (hereinafter referred to as "IC"), who is the parent corporation of SFISI, has

filed a motion for summary judgment based on plaintiff's failure to state a claim against it.

Both SFISI and IC urge the court to dismiss plaintiff's claim for lack of subject-matter jurisdiction under the Jones Act or, alternatively, to dismiss based on the doctrine of *forum non conveniens.*

DEFENDANT IC'S MOTION FOR SUMMARY JUDGMENT

The standard against which motions for summary judgment are based, as contained in Fed. R. Civ. P. 56, is that there be "no genuine issue as to any material fact" in the question under consideration.

IC alleges that it is a separate corporate entity from and thus not responsible for the activities of its wholly owned subsidiary SFISI. On this basis, IC seeks a summary judgment dismissing it from this case.

Since it is apparent that there are genuine issues as to several material facts, *e.g.*, how much control IC has over its subsidiary SFISI, IC's motion for summary judgment is DENIED.

QUESTIONS RELATING TO SUBJECT-MATTER JURISDICTION

The defendants have challenged subject-matter jurisdiction in two respects, *i.e.* that neither defendant is an "employer" subject to nor is the plaintiff a "crew member" within the meaning of the Jones Act, 46 U.S.C. §688.

The Supreme Court has marked the correct path of inquiry in determining whether a defendant as an employer falls within the purview of the Jones Act by designating certain questions as relevant. In *Lauritzen v. Larsen*, 345 U.S. 571 (1953), seven exemplary inquiries were listed as follows:

(1) Place of the Wrongful Act

(2) Law of the Flag

(3) Allegiance or Domicile of the Injured

(4) Allegiance of the Defendant Shipowner

(5) Place of Contract

(6) Inaccessibility of Foreign Forum

(7) Law of the Forum

What should be noted at the outset is that these factors are examined to determine whether there are "substantial contacts" on which to predicate the exercising of jurisdiction. *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970); *Moncada v. Lemuria Shipping Corp.*, 491 F. 2d 470 (2d Cir. 1974).

"Substantial" here does not refer to a numerical calculation or one where foreign versus domestic contacts are weighed but, rather, to a positive showing that there are contacts which justify a determination of rights being made by a court of the United States.

It is not necessary to examine each of the seven factors detailed above because it is clear that the contacts in this case

amply justify this court's exercising jurisdiction over Mr. Rego's claim.

Courts construing section 688 have repeatedly emphasized the importance attached to the law of the flag, most notably the Supreme Court in *Lauritzen v. Larsen,* 345 U.S. 571 (1953), where Justice Jackson wrote:

> Perhaps the most venerable and universal rule of maritime law relevant to our problem [jurisdiction under the Jones Act] is that which gives cardinal importance to the law of the flag. . . . It is significant to us here that the weight given to the ensign overbears most other correcting events in determining applicable law.

Lauritzen at 584, 585.

Emphasizing the law of the flag points out the need for some consistency in applicable law aboard a vessel as it moves from the waters of one country to another in addition to providing the respect comity demands for the soveignty of every state to determine the conditions upon which it will grant its nationality to a vessel, "thereby accepting responsibility for it and acquiring authority over it." *Id.* at 584.

It is undisputed that the "Cherokee," the vessel involved in this lawsuit, is documented under the laws of the United States. Defendants' Memorandum in Support of Motion to Dismiss and Motion for Summary Judgment at 8.

Further, defendants have cited no cases in which a United States court has refused jurisdiction under the Jones Act when the law of the flag is United States law.

In addition to the law of the flag, numerous courts have stressed the importance attached to the nationality of the owners of defendants corporations, including the corporate shipowner. In *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437 (2d Cir. 1959), the Second Circuit suggested and in *Bobolakis v. Compania Panamena Maritima San Gerassimo, S.A.*, 168 F. Supp. 236 (S.D.N.Y. 1968), then District Judge Kaufman held that American ownership of a defendant corporation who owned the ship involved was sufficient to establish Jones Act jurisdiction. Judge Kaufman in *Bobolaskis* [sic.] stated:

> I find that majority ownership and control by Americans of the corporate owner of the vessel represents sufficient contact with the United States to justify the application of the Jones Act to this case.

Bobolakis, supra at 238.

The owner of the vessel in the present case is Santa Fe-Pomeroy Marine Services Co., which is a Delaware corporation and a wholly owned subsidiary of defendant IC. The vessel was under the control of SFISI, a Panamanian corporation, which is also a wholly owned subsidiary of IC. In addition, all of the officers and directors of SFISI are Americans, and it appears that the principal office of SFISI is now in Texas (at least its officers and directors are in Texas) and its corporate records are kept in California. Deposition of David F. West at 39,42 [Vice President of Finance of IC and past president of SFISI].

It must be noted that the significant inquiry at this time is not whether the corporate veil will be pierced to establish liability on both or either defendant but merely whether the contacts this nation has with the transaction in question are

sufficient to justify an exertion of power over this case by a United States court.

In light of the above facts and the precedents construing the Jones Act, this court holds that the contacts between Mr. Rego's injury and the United States are substantial and therefore sufficient for Jones Act jurisdiction.

The second question with respect to subject-matter jurisdiction is whether the plaintiff, Mr. Rego, is a "seaman" within the meaning of the Jones Act.

Courts have frequently discussed whether this is an issue of law for the court or of fact for the jury. *See Offshore Co. v. Robison,* 266 F. 2d 769 (5th Cir. 1959); *Producers Drilling Co. v. Gray,* 361 F. 2d 432 (5th Cir. 1966); *Holland v. Allied Structural Steel Co., Inc.,* 539 F. 2d 476 (5th Cir. 1976).

However, this court cannot determine from the facts now in the record whether Mr. Rego is a "seaman" for Jones Act purposes, and thus this issue will be determined at the time of trial.

The only evidence as to Mr. Rego's function on the "Cherokee" is his contract of employment, written in Spanish, listing him as a "Rigger" and his statements at his deposition, page 12, that he was a seaman, moved pieces of steel, hooked pipes, and "many other things."

The Fifth Circuit's definition of "seaman" is a workman who performs a substantial part of his work on the vessel with at least some degree of regularity. *Id.*

Although one could assume that all of Mr. Rego's work during his four months of employment prior to injury was done on the vessel and that he actually lived on the vessel, on the facts before the court reasonable minds could differ as to whether the above definition has been fulfilled, not because these facts are disputed but due to their definitive insufficiency.

Accordingly, the motion to dismiss for lack of subject matter is DENIED.

FORUM NON CONVENIENS

The last question before the court is whether this action should be dismissed based on the doctrine of *forum non conveniens.*

Because the doctrine has no application once the court has determined Jones Act jurisdiction exists, *Antypas v. Cia. Maritima San Basilio S.A.*, 541 F. 2d 307 (2d Cir. 1976), *cert. denied,* 429 U.S. 1098 (1977), the motion to dismiss on this basis is DENIED.

CONCLUSION

In conclusion, for the above-stated reasons, defendant IC's motion for summary judgment and defendant IC's and SFISI's motion to dismiss based on lack of subject-matter jurisdiction and the doctrine of *forum non conveniens* are DENIED.

DONE at Houston, Texas, on the 13th day of February, 1979.

s/ (illegible)
United States District Judge

H.R. 6705, 96th CONG. 2nd SESS.

The House Rule involved is H.R. 6705, 96th Cong., 2d Sess. which states:

> "To amend section 20 of the Act of March 4, 1915 (38 Stat. 1185; 46 U.S.C. 688), to provide that actions may not be maintained under such section or under any other maritime laws of the United States for damages incurred by foreign persons or such persons' legal representatives when such persons are injured or killed outside the United States, the territorial waters of the United States, or the Outer Continental Shelf of the United States, while employed on certain special purpose vessels engaged in activities relating to the offshore exploration for, or production of, oil, gas, or other minerals unless no remedy is available under the laws of the country asserting jurisdiction over the area in which the incident giving rise to the action occurred or in which the individual maintained citizenship or residency.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 20 of the Act of March 4, 1915 (38 Stat. 1185; 46 U.S.C. 688), is amended—
>
> (1) by redesignating such section as section 20(a); and
>
> (2) by adding at the end thereof the following new subsection:

H.R. 6705, 96th Cong. 2nd Sess.

'(b)(1) Except as provided under paragraph (2) no action may be maintained under subsection (a) of this section or under any other maritime law of the United States for damages for the injury or death of any person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred—

'(A) in connection with the operation of any special purpose vessel designed for utilization in connection with activities relating to the offshore exploration for, or production of, oil, gas, or other minerals, including drilling, provision of supplies, surveying, diving, pipelaying, or other construction activities; and

'(B) in any area other than an area within (i) the United States, (ii) the territorial waters of the United States, or (iii) the Outer Continental Shelf of the United States as defined under section 2(a) of the Outer Continental Shelf Lands Act.

As used in subparagraph (B)(i) of this paragraph, the term "United States" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

'(2) Any action for damages to which paragraph (1) applies may be maintained only if

the person bringing such action establishes that no remedy is available for such damages (or was available at any time after the incident giving rise to the action) under the laws of any country—

'(A) asserting jurisdiction over the area in which the incident occurred; or

'(B) in which, at the time of the incident, the person for whose injury or death damages are sought maintained citizenship or residency '."

Office-Supreme Court
FILED
MAR 27 198
ALEXANDER L. STEVAS
CLERK

No. 80-1442
IN THE

Supreme Court of the United States

October Term, 1980

CLYDE ROMILLY, *et al.*,

Petitioners,

vs.

AMOCO TRINIDAD OIL COMPANY and SANTA FE DRILLING COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS AMOCO TRINIDAD OIL COMPANY AND SANTA FE DRILLING COMPANY, IN OPPOSITION.

SHELDON A. GEBB,
BILL E. SCHROEDER,
3435 Wilshire Boulevard,
Los Angeles, Calif. 90010,
(213) 381-3411,
Attorneys for Respondents Amoco Trinidad Oil Company and Santa Fe Drilling Company.

Of Counsel:
MICHAEL L. SHANNON,
McCUTCHEN, BLACK, VERLEGER & SHEA,
3435 Wilshire Boulevard, Los Angeles, Calif. 90010,
WINSTON EDWARD RICE,
PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS,
Hibernia Bank Building,
New Orleans, La. 70112.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

Questions Presented.

For the reasons explained above, the questions stated in the Petition are inaccurate and misleading. The only question actually presented by the Petition is whether the trial court correctly applied the applicable law to the admitted facts of this case in determining, under the express guidelines established by *Lauritzen v. Larsen*, 345 U.S. 571 (1953) ("*Lauritzen*"), and *Hellenic Lines v. Rhoditis*, 398 U.S. 306 (1970) ("*Rhoditis*"), the law of Trinidad governs the claims of its citizens performing services on a special purpose United States owned and documented vessel which operated exclusively for six years in the local territorial waters of Trinidad under a license granted by the government of that sovereign nation.

TABLE OF CONTENTS

	Page
Defect and Deficiencies of Petition	1
Questions Presented	3
Statement of the Case	3
(1) The Parties	3
(2) Base of Operations of the Drilling Rig Mariner I	6
(3) Location of the Accident	7
Argument	9
I. The Decision That the Factors Set Forth in Lauritzen Require the Application of Foreign Law to a Maritime Tort Involving Trinidad Workers on Board a Special Purpose Vessel Operating for an Extended Period in the Territorial Waters of Trinidad Raises No Special or Important Question and Is Correct	9
II. The Decision That Foreign Law Applies to Foreign Workers on Board a Special Purpose drilling Rig Operating for Over Six Years in the Territorial Waters of Trinidad Raises No Special or Important Question and Is Correct	11
III. The Decision Does Not Conflict With Treaties of the United States, the Case Law of This Court or Any Circuit Court of Appeals Decision	13
IV. Respondents Object to Petitioners' Motion to Docket Petition Without Prepayment of Costs	20
Conclusion	20

TABLE OF AUTHORITIES

Cases	Page
Bertrand v. Shell Oil Company, 489 F.2d 293 (5th Cir. 1973)	19
Chirinos de Alvarez v. Creole Petroleum Corp., 613 F.2d 1240 (3d Cir. 1980)	16, 17
Cox v. Otis Engineering Corp., 474 F.2d 613 (5th Cir. 1973)	19
Cunard S.S. Co. v. Mellon, 262 U.S. 100 (1922)	10
DeMateos v. Texaco, Inc., 562 F.2d 895 (3d Cir. 1977), cert. denied, 435 U.S. 904 (1978)	16, 17
DeSouza v. Trinidad Transport Enterprises, Ltd., 18 West Indian Reports 138 (High Court of Trinidad and Tobago 1971)	18
Farmer v. Standard Dredging Corp., 167 F.Supp. 381 (D. Del. 1958)	18, 19
Govia v. M/V Journalist, 1971 A.M.C. 1268 (E.D. Va. 1971)	17
Hellenic Lines v. Rhoditis, 398 U.S. 306 (1970)	3, 9, 12, 13
Higginbotham v. Mobil Oil Corp., 545 F.2d 422 (5th Cir. 1977), rev'd on other grounds, 436 U.S. 618 (1978)	19, 20
House v. Santa Fe International Corporation, 1978 A.M.C. 1899 (S.D. Tex. 1978)	9, 16
Lauritzen v. Larsen, 345 U.S. 571 (1953)	3, 9, 10, 11, 12, 13, 15, 18
Lemonis v. Prudential Grace Line, Inc., 81 Misc.2d 614, 366 N.Y.S.2d 541 (1975), 1975 A.M.C. 768	9
Owens v. Diamond M Drilling Co., 487 F.2d 74 (5th Cir. 1973)	19

Page

The SS Transoceanic Peace, 20 West Indian Reports 495 (High Court of Trinidad and Tobago 1972) 17, 18

Regulation

Code of Federal Regulations, Title 46, Sec. 67.01-13 11

Rules

Rules of the United States Supreme Court, Rule 17 ... 1

Rules of the United States Supreme Court, Rule 21 ... . 2, 3

Treatises

6B Benedict on Admiralty (7th ed. 1977) p. 1310 14

Gilmore, G. & C. Black, The Law of Admiralty (2nd ed. 1975) p. 323 14

Statute

United States Code, Title 28, Sec. 1916 20

No. 80-1442
IN THE

Supreme Court of the United States

October Term, 1980

CLYDE ROMILLY, *et al.*,

Petitioners,

vs.

AMOCO TRINIDAD OIL COMPANY and SANTA FE DRILLING COMPANY,

Respondents.

BRIEF OF RESPONDENTS AMOCO TRINIDAD OIL COMPANY AND SANTA FE DRILLING COMPANY, IN OPPOSITION.

Respondents Amoco Trinidad Oil Company and Santa Fe Drilling Company, respectfully request that this Court deny the Petition for Writ of Certiorari ("Petition") seeking review of the Ninth Circuit Court of Appeals' opinion in this case. That opinion is reported at 632 F.2d 82.

Defects and Deficiencies of Petition.

Preliminarily, it should be noted that the Petition fails to conform to the requirements of the Rules of this Court in the following important respects:

1. The Petition does not, and indeed could not, set forth "special and important reasons" as specified in Rule 17 for a review of the decision of the Court of Appeals by this Court. The decision rendered by the Court of Appeals is not in conflict with a decision of this Court or of another Court

of Appeals. The Court of Appeals, carefully adhering to the legal principles enunciated by this Court, decided the *facts* relevant to this litigation required the application of foreign law. Moreover, there is nothing new, special or important (except to the parties), about any of the issues. They involve, in the main, rather ordinary issues which were decided by the District Court in the usual course of judicial proceedings. The full record was reviewed in the Court of Appeals and the decision of the District Court to apply the law of the Republic of Trinidad and Tobago ("Trinidad") was affirmed in a *de novo* review by the routine application of well-established principles of this Court.

2. The Petition fails to present accurately or clearly the facts essential to a ready and adequate understanding of the points submitted for consideration as required by paragraph 5 of Rule 21. The petitioners' Statement of the Case argues the merits of their claims rather than presenting the stipulated facts which are relevant to the District Court's holding on the choice of law issue, affirmed by the Court of Appeals, which is the sole issue before this Court. The Petitioners' assertions concerning the cause of the accident are presented as issues in the pretrial conference order and each assertion will be addressed at the time of trial with evidence to the contrary.*

3. It is apparent that the Petition fails to conform to the requirements of subparagraphs (a) and (g) of paragraph 1

---

*We note here, so this Court is not misled, that the "Coast Guard report" mentioned in the Petition (Pet. 5-8), was not part of the record on appeal. Furthermore, we believe the Court should be aware that Santa Fe presented a written statement to the Coast Guard pointing out numerous errors in the facts set forth in the Coast Guard's initial report. The Coast Guard took no further action in the matter and no penalties were ever assessed against Santa Fe or Amoco Trinidad. Santa Fe's submission to the Coast Guard was identified as a trial exhibit in the Pretrial Conference Record. (Clerk's Transcript p. 610 "CT").

of Rule 21 with respect to the statement of the questions presented for review and the statement of the case.

The foregoing defects and deficiencies of the Petition should constitute, without more, a sufficient reason for denial of the requested Writ of Certiorari.

Statement of the Case.

The Petitioners' statement of the case is replete with disputed facts and embellishments and omits most of the admitted facts relevant to the choice of law issue before the lower courts and now this Court. Accordingly, Amoco Trinidad and Santa Fe are obliged to submit a further statement of the admitted facts pertinent to the Petition.

(1) The Parties.

The Petitioners are all citizens and residents of Trinidad. The personal injury plaintiffs and the decedents ("Trinidad Workers") were working on the drilling rig Mariner I at the time of the accident. Eleven of the Trinidad Workers were employed by Santa Fe. Their employment was pursuant to

a collective bargaining agreement between Santa Fe and the local Trinidad Oilfield Workers Trade Union. (CT 590). The Trinidad Workers employed by Santa Fe were all in the drilling crew. They worked as headman (liaison for drill crew), floorman, derrickman, cook's helper and warehouseman in seven-day periods with the alternate seven-day periods being spent ashore on their native island where each maintained a private residence at his own expense. (CT 585-590, 679, 868).

The remaining three Trinidad Workers were hired by, and were the employees of, Schlumberger Trinidad, Inc. ("Schlumberger Trinidad"), a Panamanian corporation, pursuant to individual written agreements for work on land and offshore Trinidad. The three Trinidad Workers employed by Schlumberger Trinidad did not live aboard the drilling rig Mariner I, but rather worked as outside specialists aboard the rig on an irregular basis to provide specialized Schlumberger Trinidad logging services relating exclusively to the drilling operations. (CT 568, 587-589, 871, 874).

Prior to the filing of these actions, none of the Trinidad Workers had ever had any personal contact with the United States. All of the Trinidad Workers' wages were paid in Trinidad and in the local currency of Trinidad. (CT 585-590). The Trinidad Workers were subject to Trinidadian income tax, and the taxes were withheld by their employers and paid over to the government of Trinidad. The Trinidad Workers were required to and did file annual income tax returns with the government of Trinidad for the years the drilling rig Mariner I was working offshore Trinidad before and after the accident. (CT 867-868).

Respondent Amoco Trinidad is a Delaware corporation, whose principal offices and places of business are located within the territorial confines of Trinidad. (CT 868-869).

The Trinidad Workers contend Amoco Trinidad was an owner *pro hac vice* of the drilling rig Mariner I. (CT 115, 680). Amoco Trinidad has never been based in or operated from any place other than Trinidad. The principal office and place of business of Amoco Trinidad is located in Port of Spain, Trinidad, and the operational base of Amoco Trinidad is located at Galeota Point, Trinidad. The president and chief executive officer of Amoco Trinidad resides in Port of Spain, Trinidad. The president is directly in charge of the activities of Amoco Trinidad and is responsible for making the day-to-day decisions of that company. The business records of Amoco Trinidad are primarily prepared, stored and maintained in Trinidad. Amoco Trinidad operates in Trinidad solely pursuant to the terms and conditions of certain licenses and concessions granted it by the government of that nation. Amoco Trinidad has no employees, other than certain officers, residing outside the area defined by the Continental Shelf of Trinidad. (CT 869). Amoco Trinidad voluntarily appeared in this action and jurisdiction over Amoco Trinidad was obtained by consent. (CT 114).

Respondent Santa Fe is a California corporation that was owner *pro hac vice* and operator of the drilling rig Mariner I. (CT 674). The day-to-day decisions concerning the operation of the drilling rig Mariner I and the work of the Sante Fe employees aboard the drilling rig Mariner I were made by Sante Fe's supervisory personnel in Trinidad. It had 103 persons working in Trinidad at the time of the accident. Eleven of these persons were clerical/accounting/administrative personnel. The remaining 92 persons were involved in the operations of the drilling rig Mariner I offshore. Eighty-two of the employees were Trinidadian citizens and residents, 21 were citizens of the United States and Canada. (CT 867).

(2) Base of Operations of the Drilling Rig Mariner I.

The drilling rig Mariner I, although technically documented under the laws of the United States, had no operational contacts with the United States between the time it left the shipyard after construction in 1968 and the time the accident occurred in 1973. From February 1970 to March 1976, the drilling rig Mariner I worked exclusively offshore Trinidad pursuant to a contract with Amoco Trinidad. (CT 870). During this entire period the drilling rig Mariner I was licensed to operate in the waters offshore Trinidad by the government of Trinidad pursuant to the terms of the oil exploration concessions granted to Amoco Trinidad by that foreign government. (CT 869).

During this six-year period almost all of its time (in excess of 90%) was spent in drilling operations while immovably fixed on a drilling location. Something less than ten percent of its time was taken up with non-drilling operations such as tows to new drill sites and setting and recovering anchors. Many of the moves were of short distances (500 yards or less) while the limits of a potential field were probed and established. (CT 870).

The government of Trinidad effectively controlled the balance between expatriate (non-Trinidadians) and local employees working offshore on the drilling rig Mariner I by virtue of its ability to control the number of work permits issued to expatriates allowing them to work offshore. The practice of that government has been to increase the percentage of local workers by eliminating positions eligible to be filled by expatriate workers. (CT 868).

Schlumberger Trinidad, the employer of three of the Trinidad Workers, provides wire line logging services as a contractor to oil companies operating on shore and offshore Trinidad. In this case, the client was Amoco Trinidad. (CT

873-874). The Schlumberger Trinidad personnel worked under the direction and supervision of a specially-trained Schlumberger Trinidad engineer with the results of their tests being provided to Amoco Trinidad who purchased the wire line logging services. (CT 873-874).

Schlumberger Trinidad is not a party to this litigation. Actions were brought against Schlumberger Trinidad in the United States District Court, Southern District of New York for claims arising out of the accident involving their three Trinidad Workers. Schlumberger Trinidad's motions to dismiss these actions were granted. (CT 419-431).

Following the accident, compensation benefits were paid by Santa Fe and by Schlumberger Trinidad to the Registrar of the High Court of Trinidad. These funds were in turn distributed to or on behalf of the survivors of Trinidad Workers Phillips and Straker. (CT 586-587). Thereafter, actions were filed by personal representatives of the heirs of Trinidad Worker Phillips, employed by Santa Fe, and Trinidad Worker Straker, employed by Schlumberger Trinidad, against Santa Fe in the High Court of Trinidad for their alleged wrongful deaths arising out of the accident. (CT 434-435). These two death claims were later settled by the parties and the settlements approved by the High Court of Trinidad.

(3) Location of the Accident.

At the time of the accident the drilling rig Mariner I was positioned some 10.5 miles offshore, north of Galeota Point, Trinidad. (CT 675-676). The government of Trinidad extends that country's territorial jurisdiction twelve nautical miles offshore. In addition, by statute, the civil law of Trinidad applies to any acts or omissions occurring in the

course of the exploration or exploitation of its continental shelf, even beyond the twelve-mile boundary of its territorial sea. (CT 840, 846).

ARGUMENT.

I.

The Decision That the Factors Set Forth in *Lauritzen* Require the Application of Foreign Law to a Maritime Tort Involving Trinidad Workers on Board a Special Purpose Vessel Operating for an Extended Period in the Territorial Waters of Trinidad Raises No Special or Important Question and Is Correct.

It is apparent from the opinion of the Court of Appeals that it correctly applied the ordinary and well-settled rules established by this Court in *Lauritzen* and *Rhoditis* in affirming the decision of the District Court to apply the law of Trinidad to this litigation. Petitioners' assertion the criteria of *Lauritzen* are inapplicable to an American flag vessel (Pet. 8) is without citation and contrary to case authority. *House v. Santa Fe International Corporation*, 1978 A.M.C. 1899 (S.D. Tex. 1978); *Lemonis v. Prudential Grace Line, Inc.*, 81 Misc.2d 614, 366 N.Y.S.2d 541 (1975), 1975 A.M.C. 768. In *House*, the court ruled against the application of United States law in a case involving the death of an alleged seaman working aboard the United States flag drilling rig Bluewater III while operating off the coast of Scotland. In *Lemonis*, the court refused to apply United States law to a claim by a Greek longshoreman allegedly injured while performing localized longshoring operations aboard a United States flag vessel temporarily present in a Greek port.

Following the guidelines of *Lauritzen* and *Rhoditis*, the Court of Appeals, as did the court in *House, supra*, and *Lemonis, supra*, gave minor weight to the United States documented status of the drilling rig Mariner I "because of the facts of this case." (632 F.2d at 86-87). The relative importance of a vessel's flag, when operating on the high

seas and when operating in the local waters of a foreign nation, is explained in *Cunard S.S. Co. v. Mellon*, 262 U.S. 100 (1922), as follows:

> "The defendants contend that the Amendment also covers domestic merchant ships outside the waters of the United States, whether on the high seas or in foreign waters. But it does not say so, and what it does say shows, as we have indicated, that it is confined to the physical territory of the United States. In support of their contention the defendants refer to the statement sometimes made that a merchant ship is a part of the territory of the country whose flag she flies. But this, as has been aptly observed, is a figure of speech, a metaphor. [Citations omitted.] The jurisdiction which it is intended to describe arises out of the nationality of the ship, as established by her domicile, registry and use of the flag, and partakes more of the characteristics of personal than of territorial sovereignty. [Citations omitted.] It is chiefly applicable to ships on the high seas, where there is no territorial sovereign; and as respects ships in foreign territorial waters it has little application beyond what is affirmatively or tacitly permitted by the local sovereign." 262 U.S. at 123.

In *Lauritzen* the Supreme Court, in discussing the importance of the law of the flag, in the context of that case, noted the concept expressed in *Cunard, supra*, that "some authorities reject, as a rather mischievous fiction, the doctrine that a ship is constructively a floating part of the flag-state, but apply the law of the flag on the pragmatic basis that there must be some law on shipboard, that it cannot change at every change of waters, and no experience shows a better rule than that of the state that owns her." 345 U.S. at 485.

That pragmatic requirement that the law of the flag must govern ships which roam the world to prevent the havoc of

a change of law at every change of waters and to supply a law when there is no territorial law applicable, is relevant to the international commerce trade involved in *Lauritzen* and the other cases involving merchant vessels plying the seas which have followed *Lauritzen's* emphasis on the importance of the vessel's flag. The law of the flag, however, is of limited importance to offshore drilling rigs, such as the Mariner I, which operate for extended periods in the jurisdictional waters of a foreign government. The aim of all offshore oil drilling is exploitation of mineral resources claimed by at least one national government. The consistently present factor in the case of offshore oil drilling rigs like the Mariner I, equivalent to the law of the flag on merchant ships, is the law of the nation claiming the oil being drilled for. In this case, that nation is Trinidad.

There is nothing in the record or in our laws that required the drilling rig Mariner I to have a United States flag to operate in the waters of Trinidad. *See* Title 46, Code of Federal Regulations Section 67.01-13. The record is clear, however, it was only able to operate in those waters with the license granted by that foreign government. (CT 869, 900). We respectfully submit the Court of Appeals correctly interpreted the guidelines expressed in *Lauritzen* in determining the United States documented status of the drilling rig Mariner I did not require the application of United States law to the claims involving these Trinidad Workers.

II.

The Decision That Foreign Law Applies to Foreign Workers on Board a Special Purpose Drilling Rig Operating for Over Six Years in the Territorial Waters of Trinidad Raises No Special or Important Question and Is Correct.

The Petitioners' assertion the Court of Appeals "has promulgated by judicial legislation a significant amendment to the Jones Act." (Pet. 12) is specious. The authorities

cited in the Petition in support of this assertion concern the application of the Jones Act based on the position held by an individual on a vessel. Whether an industrial worker meets the test of a Jones Act seaman does not concern choice of law. It only has relevance if the District Court had determined United States law governed Petitioners' claims. The District Court instead, after evaluating and weighing the relevant points of contact between the operations of the drilling rig Mariner I and the countries of Trinidad and the United States (the only two counties where competing laws are here involved), determined the law of Trinidad, not American law, governs the claims of Petitioners. The Court of Appeals, in affirming the decision of the District Court, likewise carefully adhered to the governing factors set forth in *Lauritzen* and *Rhoditis*.

Petitioners' reference to a bill submitted to a Congressional Committee as "indicative that without that amendment the Jones Act would be clearly applicable to foreign seamen on American flag and American-owned semi-submersible drilling rigs even in waters claimed by other foreign sovereigns" (Pet. 13), is as far-fetched as their reference to authorities determining who is a Jones Act seaman. Petitioners engage in pure speculation in deciding what the final outcome of the bill they cite may be in Congress. In any event, whatever action a Committee may take is totally irrelevant to this litigation since the District Court and the Court of Appeals determined the *facts* of this case required the application of foreign law. There is nothing in the Jones Act which suggests a different result. As this Court has noted and Petitioners concede, the Jones Act does not apply to all foreigners. "By usage as old as the Nation, such statutes have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law."

(*Lauritzen* at 577; Pet. 10). It is precisely these doctrines of international law which the District Court and the Court of Appeals adhered to in determining foreign law applies. Clearly their decisions are not in conflict with the Jones Act, any decision of this Court or any decision of a Court of Appeals.

III.

The Decision Does Not Conflict With Treaties of the United States, the Case Law of This Court or Any Circuit Court of Appeals Decision.

Petitioners, ignoring the facts which required the application of foreign law under *Lauritzen* and *Rhoditis*, attempt to mislead this Court into believing the Court of Appeals decision is in conflict with treaties of the United States, the decisions of this Court and other Court of Appeals. Their assertion simply is not true. Petitioners fail to recognize the legal principles established by this Court must be applied to the facts of the case before the Court. Their arbitrary assignment of importance to a particular factor to suit their argument totally ignores its relative importance in a given case. They have thus followed the mechanical approach which *Rhoditis* specifically cautioned against.

Petitioners' total disregard for the importance of evaluating the facts of a case is highlighted by their erroneous assertion the unreported cases of *Boubeta v. Santa Fe Overseas, Inc.*, and *Diaz v. Santa Fe Overseas, Inc.* (N.D. Cal. 1977), have been "overruled by the opinion of the Ninth Circuit in the instant case." (Pet. 17) Nowhere in the decision of the Court of Appeals is there any hint or suggestion of a conflict with those decisions for the simple reason none exists.

These two cases and the other unreported opinion, *Rego v. Santa Fe International Corporation*, cited by the Peti-

tioners (Pet. 17), are not relevant here. The courts' language in those cases cannot be considered in the abstract. It is obvious from a review of the opinions the facts of each case concerned a lack of local connections to one particular foreign country found controlling by the District Court's choice of law ruling with respect to the claims involving the Trinidad Workers. In the *Boubeta* and *Diaz* cases, the workers were Spanish Nationals employed by a Delaware corporation on board a United States flag construction vessel, who were injured while the vessel was in the territorial waters of Scotland, the court noting, "the only Scottish contact is the place of the accident." (CT 1049-1051). In *Rego*, the contacts relevant to choice of law were even more widespread among several jurisdictions. There, a Spanish National was hired by a Panama corporation (a subsidiary of a United States corporation) in its Rotterdam office to work on a United States flag construction vessel operating in the North Sea. (Pet. Appendix 25a). These unreported decisions concern connecting factors materially different from the local Trinidadian connecting factors which the District Court determined require Trinidad law to govern the claims involving the Trinidad Workers.

Petitioners allude to the proposition the Court of Appeals' decision somehow conflicts with the "treaties of the United States" without specific reference to any treaty. (Pet. 23). The Shipowner's Liability Convention quoted in their petition (p. 23), was accepted by the United States subject to the understanding its application was limited to "navigation on the high seas only" (Article 20). This Convention has never been adopted by the British Commonwealth, or the government of Trinidad in whose territorial waters the Mariner I had been operating for some six years. *See* 6B Benedict on Admiralty, 1310 (7th ed. 1977), G. Gilmore & C. Black, *The Law of Admiralty*, 323 (2nd ed. 1975).

Petitioners' endeavor to place the Court of Appeals' decision in conflict with the decisions of this Court and the Court of Appeals, Second Circuit (Pet. 24) suffers from one fatal flaw. The reported decisions Petitioners cite all involve merchant ships involved in international commerce which require the application of one law because of the numerous jurisdictions through which the vessel is continuously voyaging. Thus, the departure from the standard approach in international law to apply the law of the place where the acts giving rise to the liability occurred is required, as explained by this Court in *Lauritzen*:

> "because of the varieties of legal authority over waters she may navigate. These range from ports, harbors, roadsteads, straits, rivers and canals which form part of the domain of various states, through bays and gulfs, and that band of the littoral sea known as territorial waters, over which control in a large, but not unlimited, degree is conceded the adjacent state. It includes, of course, the high seas as to which the law was probably settled and old when Grotius wrote that it cannot be anyone's property and cannot be monopolized by virtue of discovery, occupation, papal grant, prescription or custom. . . . The locality test, for what it is worth, affords no support for the application of American law in *this case*. . . ." (Emphasis added.) 345 U.S. at 583-584.

This Court's rationale for giving limited weight to the place of the alleged wrongful act in that case involving international commerce has no application to the localized operations of the drilling rig Mariner I. It is the general rule, the law of the place where the acts occurred, rather than the exception noted in *Lauritzen* applicable to vessels engaged in international commerce, which applies to the claims involving the Trinidad Workers. The District Court properly emphasized this important distinction:

> "The problem is not simplified by the fact that, although the drilling rig is a documented vessel, it is fundamentally different from ships that travel the high seas since it is basically stationary and its drilling function occurred only with the license of the country off whose shores it was drilling." (Pet. Appendix 22a)

The importance of the localized foreign operations of a vessel in determining the choice of law, while not discussed in the Petition, has been considered and acknowledged with some frequency in recent time by the courts. *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978); *Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240 (3d Cir. 1980); *House v. Santa Fe International Corporation*, 1978 A.M.C. 1899 (S.D. Tex. 1978). In *Alvarez*, the plaintiffs asserted claims under the Jones Act and the United States general maritime law against Creole Petroleum Corporation, a Delaware corporation, and Exxon Corporation, a New York corporation, for the deaths of four Venezuelans who died in an explosion on board a vessel operating continuously in the territorial waters of Venezuela. The District Court, in applying the general rule for selecting the place of the wrongful act, stated:

> "The *Lauritzen* case recognizes that the most commonly accepted basis in international law for selecting tort rules of decision is by reference to the place where the liability arose. This reflects the strong interest of a nation in the activity which goes on within its sovereign territory. The court noted, however, the impracticality of such a rule when applied 'to an enterprise conducted under many territorial rules and under none,' and observed that the 'more constant law of the flag' is ordinarily applied to vessels which ply international waters from port to port. But such pragmatic considerations do not make the interest of a sovereign in

> activities occurring within its borders any less. Where, as here, the enterprise giving rise to the liability is conducted solely within one jurisdiction, that interest should be given substantial weight, I believe, in making a choice of law decision." *Alvarez v. Creole*, 462 F.Supp. 782, 787 (D. Del. 1978).

The need to respect the laws of other foreign governments in maritime tort claims of a localized nature was set forth descriptively in the recent decision of *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert denied*, 435 U.S. 904 (1978).

> "It would be an extreme suggestion, we think, that American law could govern relations between Texpan and the employees in its Panamanian gasoline stations because its stock was owned by a multinational business enterprise incorporated in Delaware. It is no less extreme to suggest that American law should govern the relations between Texpan and its employees on vessels it uses in the transportation of petroleum between Central American countries. Either suggestion is a variety of social jingoism, which presumes that the 'liberal purposes' of American law must be exported to wherever our multinational corporations are permitted to do business. Some of our laws, to other nations, may not appear as liberal as the Jones Act appears to us, and extreme applications of such an effort might well result in those nations closing their door to such corporations, to their and our competitive disadvantage." 562 F.2d at 902.

These comments of the Third Circuit Court of Appeals are particularly apropos of the Mariner I cases since the courts of Trinidad do provide a judicial remedy for maritime personal injuries, *Govia v. M/V Journalist*, 1971 A.M.C. 1268 (E.D. Va. 1971), *cf. The SS Transoceanic Peace*, 20 West Indian Reports 495 (High Court of Trinidad and

Tobago 1972) (High Court of Trinidad exercises same admiralty jurisdiction as the English High Court of Admiralty) The courts of Trinidad have a particular interest in personal injury actions because damages are controlled by the court in order that there be the highest practicable uniformity of awards in such actions. *DeSouza v. Trinidad Transport Enterprises, Ltd.*, 18 West Indian Reports 138 (High Court of Trinidad and Tobago 1971).

Finally, Petitioners, in their zeal to raise a special or important question, without citation of case authority, argue the application of the law of Trinidad to their claims will create an unequal treatment between the citizens of Trinidad and the Americans who worked on the drilling rig Mariner I. (Pet. 22, 24). The cases which consider the choice of law applicable to a maritime personal injury claim deal with a particular claim before the court not the comparative status of all personnel on board. Under the *Lauritzen* test, there is an obvious distinction between the Trinidad Workers whose employment was required by the Trinidad government and the American workers who enjoyed the benefits and burdens of United States citizenship.

The allegiance of the Trinidad Workers is a factor that points to the law of Trinidad whereas in cases involving a United States citizen as a plaintiff, allegiance of the American plaintiff is a factor which would point toward the law of the United States. Thus, in *Farmer v. Standard Dredging Corp.*, 167 F.Supp. 381 (D. Del. 1958), cited by Petitioners (Pet. 23), the court, after weighing all of the relevant factors, decided to apply the law of the United States to an injury to an American employed on a United States registered dredge in the local waters of Venezuela. The opinion leaves no doubt that had the plaintiff been a citizen or domiciliary of Venezuela, it would have applied Venezuelan law, observing that Venezuelan law was "presumably adequate for

Venezuelan residents." 167 F.Supp. at 384. In any event, the status of the Americans on board the drilling rig Mariner I is irrelevant here for none of them filed suit for personal injuries.

The Petitioners' assertion of unequal treatment also ignores the fact that persons are treated differently under the laws when working offshore. Thus, a wire line operator, like those Trinidad Workers employed by Schlumberger Trinidad, working on a drilling barge, is not a seaman for Jones Act purposes because he is not permanently assigned to the vessel. *Cox v. Otis Engineering Corp.*, 474 F.2d 613 (5th Cir. 1973). So also an offshore worker injured on a platform some ninety miles off the Coast of Louisiana has no rights under admiralty law. *Bertrand v. Shell Oil Company*, 489 F.2d 293 (5th Cir. 1973). Likewise, in *Owens v. Diamond M Drilling Co.*, 487 F.2d 74 (5th Cir. 1973), a motorman on a platform who ate, slept and performed miscellaneous services on a tender vessel assigned to the platform was held not to be entitled to seaman status as were those permanently assigned to the tender. But probably the most graphic example of distinctions made under maritime tort law among workers employed offshore is *Higginbotham v. Mobil Oil Corp.*, 545 F.2d 422 (5th Cir. 1977), *rev'd. on other grounds*, 436 U.S. 618 (1978).

In *Higginbotham*, three passengers, Higginbotham, Shinn and Nation, died in a helicopter crash in the Gulf of Mexico. The District Court found each of the three passengers was covered by a different law. Higginbotham, as a platform worker, was covered by the Death on the High Seas Act and general maritime law; Shinn, employed on a drilling barge, was found to be a seaman covered under DOHSA, the Jones Act and general maritime law; and Nation, as a non-seaman employee, was covered by the Longshoreman's and Harbor Workers' Compensation Act. 545 F.2d at 424-

425. The Fifth Circuit Court did not question the application of different laws to each of the three individuals killed in the same accident offshore. It did, however, find Higginbotham was also entitled to seaman status, not because of any requirements for the same laws to apply to everyone involved in the same accident, but only because he worked predominantly on board vessels.

The above examples of different laws being applicable among personnel working offshore underscore the fundamental principle that each case before the court has to be considered on its facts dealing not with generalities but the claim presented. The Petitioners' assertion the Court of Appeals' decision resulted in "unequal treatment" attempts to conveniently create for them in this case a new choice of law factor contrary to all judicial precedents which have considered the law applicable to maritime torts.

IV.

Respondents Object to Petitioners' Motion to Docket Petition Without Prepayment of Costs.

Petitioners have petitioned this Court to docket the Petition without the prepayment of costs under the authority of Title 28 United States Code section 1916. Respondents have disputed Petitioners' alleged status as seamen and it remains as an issue to be tried in this litigation. (CT 144, 680). Accordingly, Respondents respectfully object to Petitioners' contention they qualify as seamen under Title 28 United States Code section 1916.

Conclusion.

The decision of the Court of Appeals presents no "special or important" reason for an exercise of this Court's jurisdiction. Moreover, the decision of the Court of Appeals was

manifestly correct in affirming the decision of the District Court and in denying Petitioners' application for a rehearing.

We respectfully submit that the Petition for a Writ of Certiorari should be denied.

SHELDON A. GEBB,
BILL E. SCHROEDER,
Attorneys for Respondents
Amoco Trinidad Oil Company and
Santa Fe Drilling Company.

Of Counsel:
MICHAEL L. SHANNON,
MCCUTCHEN, BLACK, VERLEGER & SHEA,
WINSTON EDWARD RICE,
PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS.